A DISCOVRSE OF THE STATE ECCLESIASTICALL OF THIS *Kingdome, in relation to the Civill.*

Considered under three CONCLUSIONS.

With a DIGRESSION discussing *some ordinary Exceptions concerning* Ecclesiasticall Officers.

By C.D. alybute ownino

The second Edition, revised and enlarged.

OXFORD.
Printed by *William Turner*, and are to be sold by *Ed. Forrest*. 1634.

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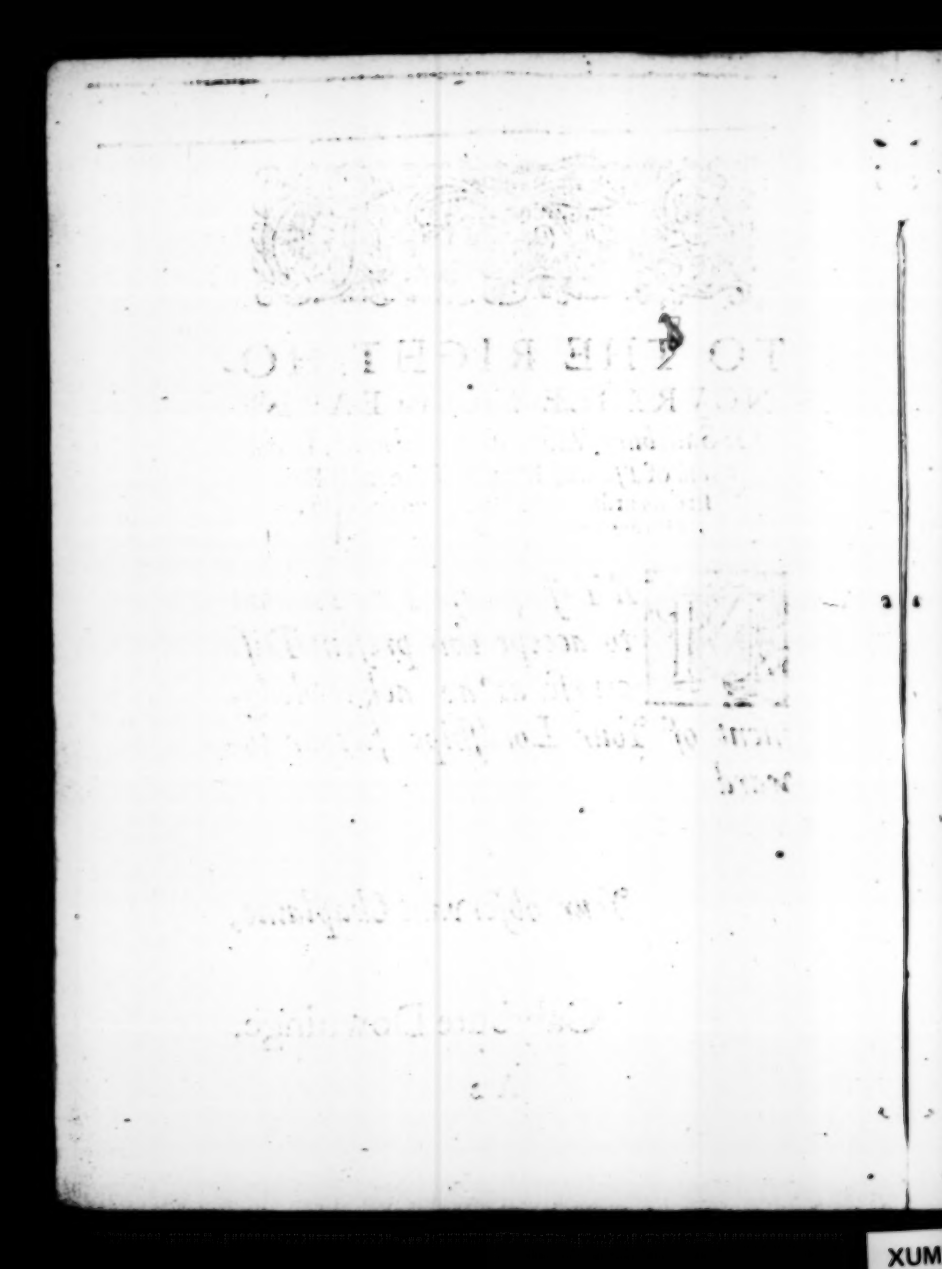
TO THE RIGHT HONOVRABLE WILLIAM EARLE Of *Salisbury*, Viſcount *Cranburne*, Lord *Cycyll* of *Eſndon*, Knight of the moſt Illuſtrious order of the Garter, and one of his Majeſties moſt Honourable Privie Councell.

MAY It pleaſe Your Honour to accept this preſent Diſcourſe as an acknowledgment of Your Lordſhips favour toward

Your obſervant Chaplaine,

Calybute Downinge.



THE FIRST CONCLVSION.

That the present State Ecclesiasticall is most convenient, and best agreeing with the Civill.

IT is not a little loose consideration, that will cause us to conceive with what care and cost States and Kingdomes should be preserved, seeing they uphold and derive all happinesse to man, as he is a sociable and a feeble creature; and yet in themselves are so subject to decay, and the causes of their corruptions being so many. For the best tempered Common-wealth is not of any constant continuation, but full of changes, and those at last will, after much interchange, drive it to a fatall period. It must therefore bee the care of the present age, to see that it receive no detriment while they are in it: for they may bee so orderly, as to worke no distemper, but conserve it in health & wealth, or at least keep it from decaying so fast, that having some space to fall in, it may recover, or they have time to leave it, and not fall with it, nor it fall upon them. Now the best, and all that the passing present generation can doe, is *Senec. Epist. 117.*

either to keepe things in primitive order, or to reforme them to it. The firſt of which is difficult to continue, the other dangerous if long diſcontinued. Yet Kingdomes muſt bee conſerved, by the ſame meanes they were firſt eſtabliſhed. This labour and care then will bee to beſt purpoſe beſtowed upon thoſe parts which are moſt neceſſary, and uphold the reſt as eſſentiall and fundamentall, being the principles of the intrinſicall, originall good: δύο ἀρχαὶ πάσης πολιτείας, ἔθη καὶ νόμοι, or upon thoſe that ſecure theſe, δυοῖν γὰρ ὄντων ἐφ' ὧν σπεύδεται πολίτευμα πᾶν. Now that which is the onely infallible ground of theſe, muſt needs be principally reſpected by thoſe that are undertakers for the publick good; and that ground is True Religion. For though ill manners are *per accidens* the cauſe or rather the occaſion of making good lawes, yet they are better in the executing, beſt when they are obeyed. Now good manners cauſe obedience, and Religion naturally begets good manners. But Religion cannot ſubſiſt without publicke exerciſe and action; and ſo the requiſites of it are times, places, ceremonies, and ſome perſons who ought to be ſet apart, and wholly, and only employed in it, as dedicated and devoted to that worke, and they muſt be in the Common-wealth. Therefore ſeeing it is neceſſary to have a Religion to preſerve the Common-wealth, it is by conſequent as needfull, to have preſervers of Religion, that may not overturne the Common-wealth by over-ruling Religion. Wherefore the choyce of them needs to be ſuch, that ſeeing they muſt be in the Common-wealth of neceſſity, they may be of the Common-wealth for univerſall ſafety. And yet they are to be diſtinguiſhed by ſtate, and order, to avoid confuſion; nor doth their diſtinction enforce any ſuch forme, after which they muſt govern, as may be inconvenient to the publick civill ſtate, whereby they are to be governed. The care then of the wiſeſt, muſt be either to preſerve, or reſtore that forme of the

Polybius hiſt. lib 6.

Sr *Tho. Moore* his Apologie for the ſpirituality, *cap.* 10.

the Clergy, which is most agreeing with the Civill State, & that will be the meanes to prolong the age of the State, by preserving concord amongst societies; which, though at last it come to an end, yet it may out-last our dayes, that wee be not unhappie in the ruine; for it is not the infelicitie of States which have long flourished to decay, or be destroyed, but the unhappinesse of those men, whose hap it is then to live, and not when they did flourish. Now every forme of a Clergie will not fit, but according to divers countries, they have beene severall, suiting to the times, places, and people. The first was the originall, domesticall discipline in private families, before God made choyse, and actually separated a Nation to himselfe. Then followed the Leviticall Nationall Regiment, compounded and composed of and according to the Ceremoniall and Judiciall Lawes. Both these formes vvere not onely by a divine permission, but also by injunction; yet not perpetuall nor universall. Neither of these then are the government wee must chuse, because that manner of exercising religion is antiquated. We must then consider of a forme, which may be conformable to the present practice of true Religion, in relation to Gods revealed Will, which may withall be sutable, and sorting with this present State, that so they may uphold each other; which forme, though it be not according to Gods expresse mandate in some particulars, yet it is not against it, but with his permission of approbation in all points. Now in this choyce, wee must consider our owne forme of Civill government, and whether that were imposed upon us by conquest or by our owne consent; if by free consent and of long continuance, it will with more ease and desire be preserved, and with greatest danger altered; if by conquest, the more Charters of priviledges are granted to us under it, the more it is endeared to us, and esteemed happie; but our forme of state is a free Monarchie,

Guicciardine hypomneses Polit. 141.

chie, erected and protected by free consent, and of long continuance, not imposed, but confirmed, and reformed to the first freedome by a happie Conquest, and endeered unto us by many Charters of wholsome priviledges. Therefore we must seeke or keepe such a forme of State Ecclesiasticall, as may best accord with our forme of Civill policie.

§. 2. This present State Ecclesiasticall is the forme that best agrees with the Civill State. That it is not against the Law of God, I will not goe about to prove, because I hope none will question it: neither that it was the Primitive, & is to be wished that it were the government of the present visible Catholique Church, because that is already proved without all contradiction by many most judicious and orthodoxe Divines: But my undertaking is (as farre as God shall give me understanding) to discourse, how it is most agreeable with this Kingdome. All States have alwaies endeavoured, as to have a religion, so to frame the exercise of it according to their owne dispositions: but some with more doting indulgence, have at last changed it into that which they were most naturally disposed to, and did not alter and order their inclinations by it. As the grand Monarchies, the Chaldean with whom the Persian may well be joyned, these turned the acts of religion into Philosophicall considerations, enquiries, and explications of nature. The Egyptians (a principall branch of these Monarchies, and from whom some thinke the Chaldeans were derived, and that *Belus Neptuni Libiæ que filius in Babyloniam colonos ex Ægypto traduxisset, & ex iis Sacerdotes quos Chaldæos Babyloniæ vocant, qui more Ægyptiorum astra observant, &c.*) These Egyptians naturally δεισιδαίμονες, superstitious in religion, curious in mysteries, transformed religion into all kinde of superstitions, and by trying conclusions, and chymicall experiments upon it, conceited the substance of it into unexpected

Diodorus Siculus Biblioth. l. 1.

unexpected fancies, furthered by mimicall expressions, leading into, and leaving in mysticall mazes. The *Grecians* by nature Νόημονες, ἐριστικοὶ, καὶ φιλόνικοι, intelligent, able to finde out, and loving to contend, drew religion into disputes, and would beleeve no more than they could finde out by search of reason, and apprehend by force of fancie; and that they obstinately maintained, by a wanton working wit, which they might with more ease doe, seeing their language was so happie for expression. The *Romans*, by nature inclined to dominion, fitted the frame of their religion to a Monarchicall forme under the *Pontifices*; yet they seemed to seeke a Monopolie of all the Gods in the world: for they received and worshipped the Gods of all the Nations they conquered. These Nations framing religion to these ends, had a forme of government, under religious persons, suitable to further, contrive, and compasse by all meanes their particular purposes, and therefore they gave them power, of a most large extent, then they were ruled by them; for the *Chaldean* Kings were originally Priests, and Ἀιγύπτιοι χρόνον μακρὸν ὑπὸ τῶν ἱερέων ἐδουλεύθησαν (that is, the *Egyptians* were anciently governed by Priests:) a Priest, and a Prince, were all one with them. So the *Magi* amongst the *Persians*, the Priests of *Apollo* at *Delphos* amongst the *Grecians*, did what they would. And the *Romans* were led by their *Pontifices* and *Augures*, but it was whither they would, namely to a Monarchie. Wee having not the ends of these Nations in our religion, must not use the same forme of Clergie. For I conceive the aime of the best and wisest with us, is to preserve the Church and Common-wealth together. Now it cannot bee, where the state of the Clergie governs, but where it is governed. Our aime being such, let us consider what forme will be best governed under this Monarchie. There are but three distinct formes

Cujacius in l. 2. d. Orig. I. Civil. §. 12.

Aug. de Civit. Dei. l. 10. c. 12.

Synesius Epist. 12.

Cujac. in d. l. 2. d. Orig.

of Ecclesiasticall government in Christendome, as the Monarchicall, Aristocraticall, Democraticall; of these, the Aristocraticall is most conformable to the rule of this Realme. In proving of which assertion, I will not onely insist upon the proofe of past and present experience, that it is so, but discourse in reason why it should be so. And first in opposition to the other formes of Ecclesiasticall government: what they are likely to produce, vvoefull experience hath long since felt in the one, and what wee may expect, upon probable conjecture, from the other, is not to bee desired by any that understand, and love the happinesse of this Civill State. For all their principles, fundamentall in their grounds, of augmentation in their growth, of conservation in their heigth, and of reparations in their decayes are most dangerous for this Monarchie; and the causes of their corruption would be so incorporated into the body and bowels of the Civill State, that if it fall not before them and into their hands, they would goe neare to pull it downe with them when they fall. Not to speake of their power, which they must have, and the exercise of it, either in an ordinarie and lawfull course, or by indulgence, or usurpation, and the manner of their proceedings in the execution of it, what instruments they use in counsell and action, how much they trench upon the power, undermine the government, countermine the proceedings, countermand the edict, and confront a Monarchie, I leave it to wise and active men to consider.

φεκάσματα τῆς πολιτείας. Polyb. lib. 6.

§. 3. First to speake of the Monarchicall, which is now the Papall government. How this Monarchicall forme hath heretofore agreed with the State, all know; and it is not likely that it should now so well accord with it, because the reasons of that little agreement then are ceased, which were the then present particular interests wherein this State used that Monarchy, for the we aimed to enlarge

our

our domition by therigh of succession in *France*, by the right of conquest in *Scotland* and *Ireland*. But the causes of disagreement still remaine, and are on their part aggravated to an utter opposition; so that as before it was dangerous, so now it is a desperate case to re-entertaine that forme of Clergie, which can and will rule us, and must necessarily alter and so worke the ruine of the present State. Under this forme this Kingdome was no Monarchie, but a Province, under a forreiner, an usurper and a Tyrant. This was our best condition when that Clergy ruled us, though as favourable as they could, or did, any Monarchie in *Europe*. The lawes and priviledges of the Land were continually broken and infringed by them, especially those lawes that did most immediatly uphold the Kings prerogative. Against them they continually promulgated particular edicts; for the Decrees were too generall to bee applyed to occasions, and therefore they added the Decretals, so called, because they gave wings to the Decrees for quicker dispatch. And we shall finde that most of the *Decretall* Epistles, which concerne Jurisdiction, were written to *English* Prelates. And (as I conceive) some reason might be, because the lawes of this Land are more contrary to the Canon Law, than the lawes of any other States in Christendome, being they are more ruled by the Civill Law, from which the Canon is derived, and so more causes might arise here amongst us, either out of the contrariety of the Lawes, or out of the narrower extent of the Common Law, and also partly out of the ignorance of the proceedings of this State, which was then likely to be most, because intercourse and intelligence with *Rome* for that time was abridged; (for *Henry* 2^d^, being then at variance with *Thomas Becket*, who was sheltered by the Pope *Alexander* the third, permitted not any Legate to reside in the Kingdome; but as soone as *Vivian* was arrived, he was questioned, and that by the

Duarenus de beneficijs Eccles. in Præmio.

Bishops of *Winchester* and *Ely*, (how bee durst land without the Kings speciall licence.) And surely they writ the ofter to *English* Bishops, because they suspected them, and justly, to be more partiall for their Prince, than the Prelates of any other Kingdome, as appeares by their readinesse to examine this Legate, and also by an Epistle *Decretall* of *Alexander* the third, to the Bishop of *London*, who then was *Gilbert Foliot* (a man much commended by *Mathew Paris*, and *John Salisburiensis*) in that Epistle hee curries favour with him in a cause which hee knew was of Ecclesiasticall cognizance, and was so judged here in the Kings Court, (as appeares out of *Glanvill* then Lord chiefe Justice.) I thinke in the very particular case. But hee feared, seeing the Bishop could doe so much with the King, and would doe so much for his King, least hee should finde some way to intitle it to the Crowne: and he had good reason to feare, since the Bishop had so often in the Kings behalfe opposed *Thomas Becket* and him. These may bee some reasons why the Popes sent so many Epistles into *England*, and I am the more confirmed in them, because I finde they were for the greatest part written by the most Pragmaticall Popes, who busied and bestirred themselves most in setting up orders, and new fresh Fryes, and fraternities of Fryars, and in pulling downe the powers both of our Kings and Bishops: to wit, from those seven Popes who were the thirds, and I thinke the worst of their names. I am sure of their predecessors. As for the most part they were written from *Alex. 3. Lucius tertius, Vrbanus tertius, Clemens tertius, Cœlestinus tertius, Innocent tertius*, and *Honorius tertius*; these men did and undid very much, because they were active, and lived long. If then this forme of Clergy was thus prejudiciall to our State before it was opposed and incensed by the statute of *Proviso* and *Præmunire*, and cast off by the Kings just re-assuming their power,

C. causam. extr. qui filii sunt legitim. Sarisburiensis de nugis curial. lib. 7. cap. 24. Glanvill, lib. 7. cap. 15.

Ad Regem Angliæ pertinet de possessionibus judicare.

Iohannes de Parisijs contra Bonifacium octavum. cap. 12. Alexander 3. PP. dicit. Ad Regem pertinet, non ad Eccl siam, de talibus possessionibus, judicare, ne videamur juri Regis Anglorum detrahere.

Liber de potest. papæ anonymus, qui incipit, Rex Pacificus.

power, (which shewes that all their right was nothing but our Soveraignes wrong;) surely now we are not to expect so much favour from them: and therefore as the State then thought it necessary and right to cashеere it, and brought their purpose fully to passe; so it is now more necessary and just to keepe it out, since it is infinitely increased in tyranny, since that unhappy, unadvised, ill-advised, Non-Catholique Councell at *Trent*.

5. 4. Those Nations shall have the best use of that forme, who propound a Civill State as large as their Ecclesiasticall; and to whom it hath first sought too for assistance: and withall are able to over-rule it. For after *Justinianus* the last of the true *Roman* Emperours, and *Gregory* the last of the good Popes, that See clave to *Phocas*; who named the Pope Universall Bishop, that he might proclaime him Catholique Emperour. But when in the next Centurie the Easterne Emperours, infested with the *Saracens* warre, began to pull downe Images as some cause of the warres, which the Pope endeavoured to set up againe by the second Councell of *Nice*, then, whether because they did wrong him in disobedience, or rather because they could doe him no good, the *Greeke* Pope *Zachary* fell off to the *French* before the next Centurie. And then *Pipin* used him to confirme, not to conferre his new atchieved Kingdome; for in those dayes they gave no such power, neither did Pope *Zachary* clayme it: for he deposed not *Childericke*, but consented to the deposing; which was by the Peeres of *France*; neither did he set up *Pipin* in his roome: but they that deposed the other onely sent to *Rome* to have *Zacharies* advise in it, because it might passe more plausibly in the world by the consent of so grave an Oracle: as it hath alway beene good wisedome to winde in the conscience of one who is esteemed an upright Judge, for the countenance of an unusuall cause humorously undertaken by the first

Bulla quasi Bulè, at juridica.

Author; especially there being then a faction amongst the Bishops of *France*: so that this inquirie of his judgement in point of fact, did not submit to any clayme of right. And *Gotefridus Viterbiensis* affirmes, and *Baronius* confesses, *Francos non Zachariæ paruisse decreto, sed acquieviſſe conſilio*: and there is great difference betwixt an absolute injunction, and a politique advise, which is onely an answer out of discretion and left to discretion, and implies no obligation of necessity. But this is without question, *Pipin* being ambitious of the Kingdome, and desirous to cover and colour it with religious ends, used the Pope to countenance and compasse his designe; who would not withstand him, being ingaged to him for protection, and by bounty; or, which is likelier, he durst not, being too much in his power. But howsoever it was, he clave fast unto the *French* for that Centurie: especially to *Charles* the Great, the repairer of the Westerne Empire; from whom the *Caroline* succession continued till *Otho* the third. But then the *French* Kings, being distracted by warres at home, could no more assist them: *Gregory* the fift an *Almaine* transferred it to the *Almaines*, chose those seaven Electors; but the Pope agreed not well with those Emperours: for after the *Almaine* Pope was dead and *Italians* succeeded, they presently began to quarrell with the Emperour, and to send challenges of right into *Italy*; knowing that the Emperour was not able to doe much for them in giving them as the *French* had done, and perceiving hee was more unable to hold from them that which they would have: so that the Emperours were continually imbroyled by them, being not able to rule them, decreasing as fast as they rose. Then the opposition betwixt many particular Popes & Emperours, (as betwixt *Gregory* the seaventh and *Henry* the fourth, & *Alexander* the third with *Fredericke Barbarossa*) was very strong. But after it grew to such a height that they were setled into

Baronius Annal. Anno 750.

Baronius Annal. Anno 751.

Augustinus de Ancona de potest. Papæ: quæst. 37. Art. 5.

Sigibertus chron. passim.

into factions of separations, as the Ecclesiastiques and Imperialists, especially in *Italy*, which the *Italians* quickly perceiving, because earnestly desiring the Emperours power over them to be looser, began to make use of the Papall present opposition to procure their full libertie: and therefore these factions were most strong there. Yea that grand faction distinguished by many formalities, was principally maintained under the names of the *Guelfs* and *Gibellins*, which swallowed up all the private and petty familie-factions of *Italie*. As the *Ursini* in *Rome* were *Guelfes*, the *Colloensi Gibellins*, the *Uberti* in *Florence* were *Gibellins*, the *Bondelmonti Guelfes*; & so it was in *Naples*, *Milane*, & *Genoa*, where the *Spinoli* were *Guelfes*, & the *Grimaldi Gibellines*: which strife cōtinued hot till *Bonifate* the eight, who perceiving how much his Predecessors had gained upon the Emperor, & saw but little more for him to get, began to practise the like domineering humour upon the other Potentates of Christendome, sending his letters of claime to the Kings of *France*, *England*, *Scotland*, *Denmarke*, *Poland*, *Hungarie*. But being opposed by *Philip le Beau* King of *France*, hee did flie backe to the Emperour for succour, who then was *Albertus*, the first Emperour of the house of *Austria* (for though his father was Emperour, yet hee was not of the house of *Austria*, neither of the old Marquesses nor late Dukes, but Earle of *Hamburg*, who had conquered the Dukedome of *Austria* for his forme. This *Boniface* the *Spaniard* first began the faction betwixt the Kingdome of *France* & the house of *Austria*, by giving the Kingdome of *France* to *Albertus*. These two better agreed than any, because the Pope had taken off the Emperour from seeking his owne right in *Italie*, by employing him as his champion to enlarge his Dominion in other Kingdomes: and partly because the Emperour had good hope to continue the Empire in his family, as it hath neere foure hundred yeares. From which

Nubrigensis hist. Anglicana lib. 4. c. 13. Abbas Vspergensis Chron. passim.

Math. Paris. hist. Anglicana Anno 1215.

Gerard du Hallan des affaires liv. 2.

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which time the Emperours and Popes disagreements were not so frequent, but onely when some *French* favourers were Popes, and they sate at *Avinion*; as *Clement* the fifth with *Henry* the seventh, and during the times of the Councels of *Constance* and *Basill*. But by reason of the schismes in the *Roman* See, they did one another neither much good nor harme, untill the time of *Alexander* the sixth, a *Spaniard*, who was exactly ambitious, a great lover of his Country, and one that did much for it. For hee joyned with *Ferdinand* the first Catholique King, helping him to subdue *Spaine*, and therefore first brought in the Inquisition *Contra los Indios y Moros, que le avian tornado Christianos*, (that is, against the *Iewes*, & *Moores* that would not turn to Christianity) which *Caranza* Archbishop of *Toledo*, saith *Ferdinand*, conceived himselfe bound in conscience to use, by vertue of an oath taken with an imprecation by one of his predecessours in the fourth Councell of *Toledo*, which *Baronius* so much commends. This Pope also bestowed upon him the then discovered *Indies*, with many other favours; and for his sake, and in opposition to the *French*, hee was as fast a friend to the house of *Austria*, as his deepe dissimulation would suffer him; and the rather, because they had lately matched with the House of *Burgundie*, which much weakened the *French* force, and strengthened their factions. But then most whē *Philip*, the heire of the House of *Austria* & *Burgundie*, incorporated himself with *Spaine*. So that I will conclude these things considered, that this forme is only safe & convenient for those Kingdomes that propose Conquests, and can rule it as the protectors of it.

Anonymus Hisp. in vita Alex.

Baronius Annal. An. 637.

Philip. Comineus, lib. 8.

Thuanus hist. lib. 4.

§. 5. So then seeing this Clergie is not for us, I will consider of the other, which for distinct proceeding, wee may call *Democraticall*. When the three Prime Potentates of Christendome were, *Charles* the fift, *Henry* the eight, *Francis* the first, such as deserved and desired to have all the

the ſoveraigne power that could of right belong unto them, and yet were contrariwiſe uſurped upon, & deprived of all their eminent ſupremacie, in thoſe things that moſt concerned them; and perceiving (ſome beginning to queſtion the Pope) a courſe of relieving themſelves, they began to urge a Councell for reformation, not only in doctrine & manners, but alſo in point of Eccleſiaſticall government. But it was ſo long urged by them, to no purpoſe, that *Henry* the eight adviſedly wrote to the other; That ſeeing the Pope had ſo long put it off, & now intended to hold it within his owne Territories it were the beſt courſe for every one to reforme his owne Kingdome; and he did ſo, with the adviſe, conſent, & deſire of the Church and State-repreſentative. No ſooner was a reformation in any degree ſettled, but preſently it was excepted againſt by ſome that favoured the Church of *Geneva*, as not fully reformed, becauſe not agreeing with their new neat platforme; & that was urged upon us, as the only Apoſtolicall government of the Church. But I marvell how ſuch an exact government ſhould be ſo ſuddenly framed, or elſe, which is more ſtrange, that they could ſo conceale their happy invention, as that *Francis* the firſt, a King of *France*, that ſearched into his government as much as any, ſhould not know of it. For I am very much deceived, if he had not bin much miſtaken, knowing of this project, to deſire the Councell might be held at *Geneva*, being it was Diametrically oppoſite to the *Roman*. But our State had no reaſon to receive it. For though it was neceſſary, not only in reaſon of State, but alſo out of conſcience, that after wee perceived the indiſpoſition of the *Roman* Clergie to reforme themſelves, (which they ſeeme to hold impoſsible, for though every Cardinall take an oath in the vacancie, yet it cannot binde him when he is Pope) we ſhould then performe our duty, eſpecially ſeeing it ſtood with the publick good. Yet neither of theſe conſiderations did engage

Hiſtor. Concil. Trid. l. 2.

Hiſtor. Concil. Trident. l. 2.

gage us to accept of such a forme of Clergie, as seemed to runne a cleane contrarie course, seeing we propounde not an innovation, but a reformation; that being as dangerous, as this was necessary; it could not here be entertained without an universall innovatiõ. Now all stirring changes are dangerous, especially when the body of the Commonwealth is full of diseases, discontented humours. Because all alteration sets the humours a working, and one humour being a-foote stirres up all the rest, either alluring by sympathy, or provoking by antipathy; & when they are once a-foote, it is to be feared, that they will not only disburthen the body of malignant oppressing crudities, (as is onely to be wished) but also weaken it in the most principall parts, causing it to receive a dispositiõn to the like distemper, upon every small distaste. But is is most dangerous to innovate in that part of a Common-wealth, that is most essentially active, and hath beene lately recovered, especially if the matter proposed do minister any cause of relapse. Both which seeme too true in this new discipline, which gave an occasion to the Clergie to revolt in the denying the supremacie, which they lately acknowledged. And being a forraine *French* device, might seeme to come within the compasse of a *præmunire* for intrusion, as well as that of the Church of *Rome* for usurpation. But this was only propounded, not brought in, & that by men who were by some beleeved to be faithfull to our State. And it may be they had no dangerous aime in it: yet they have no reason to be offended, if wee doubt whether such active errours would not have bin more dangerous in the events than they could be in their intentions, neither have they any true ground to censure us of uncharitableneſſe, if wee should dissolve this doubt with a *videtur quòd sic*; for though it be a generall rule both of discretion and charity, that things doubtfull are to be construed in the better part: yet it is not a safe principle to be followed in deliberations

Legũ mutatio in se est quoddam nocumentũ Reipublicæ, nam ad observandũ Legem plurimum valet consuetudo. Durand. de legib. quæst. ult. ad 1.

deliberations concerning the Weale of the Publick State: Yet it would have beene apparently very dangerous for our Kingdome, since it did necessarily induce an alteration in the profession and practice of the lawes, which by reason of their long use, are as it were naturalized into the manners and disposition of our Nation. Τὸ ἀρχαῖον ἐγγύ τι φαίνεται τῇ φύσει. It must necessarily have conferred ruines upon our Schooles of Learning, and Hospitals of Charity, razed the foundations of our Churches, confounded divisions of Parishes, changed the right and custome of paying tythes, with many such miserable inconveniencies, which were so in the Apostles times of miseries, in persecution. So that the State then would not venture to trie conclusions upon it selfe by this new receipt, but chose rather to feele the supposed paine, than to take the pill: and yet it hath subsisted, though not in that heigth of health, which that forme of government promised, yet in such a good competent continuance of reasonable well, that the present State also had rather indure the worst of the disease, than make the best use of the remedie; wisely considering that all their aggravated mischiefes were but casuall, curable, inconveniences: being as it were naturall defects that preserve from suddain dissolution, may with more ease and safety be endured, than cured in relation to the present estate of affaires. And if it must have made such a change in the entrance, what would it have done in the continuance? how would it have agreed with this Monarchie, that must have entred with such oppositions? so that I neede not to say much to discard it, for it hath enough in it at the first sight to keepe it out. *Sufficeret quidem schismaticam imperitiam propositione cecidisse. Ut Ennodius in Apologetico pro Synodo Palmari.* And I confesse, that, if I would, I cannot say much of it with any confident certainty, because indeed I doe not know, neither doe I thinke that

Arist. Rhetor. lib. 2. cap. 11.

any of them doe, or at leaſt ever have ſet downe in poſitive and plaine termes,) the whole frame and face of this platforme, as they would have it received in this Kingdome. But as much as I conceive of it, and at the beſt and pureſt, it is a mixt Democraticall diſcipline, and it is not likely that a diſſolute Democracie ſhould long agree with this Monarchie. It is not my intent here to diſcourſe of the nature of a Democracie, that I ſhould ſhew the manifold conſequent, coincident inconveniences, that doe naturally flow in with it, and follow it notwithſtanding that *Machiavell*, in many of his diſcourſes upon *Livie*, doth preferre a Democracie before any other forme, but rather wittily, out of a Paradoxicall contradicting humour, than wiſely, out of the weight and worth of ſincere, ſage, and ſerious arguments. And *Plato* ſaith thus much for it, in his *Idea* of a Common-wealth, *inter iniquas formas optima, inter legitimas deterrima.* For if it begin to degenerate into an Ochlocratie, (as I cannot conceive it poſſible, but it muſt, conſidering that liberty is the end and excellency of it) then it turnes to a moſt head-ſtrong intolerable tyranny. For I am not of their opinion, that hold it a contradiction, that where a Democracie prevailes, there ſhould at the ſame time be a tyranny. For the *Ephori* of *Sparta*, were (as the Tribunes of the people of *Rome*) choſen by the people, and out of the common people, and the conſervators of their liberty. Yet I thinke there are but few that diſcourſe of theſe *Ephori*, but they conclude, and condemne their government of tyrannie. They caſt *Pauſanias* into priſon, and *Thucidides* ſaith, that they uſurped that power over, and againſt their Kings, for they put *Agis* junior to death, as *Plato*, Κατὰ Ἐφόρους τυραννὶς ἦν Λακεδαιμονίων πολιτεία: i. e. in relation to the *Ephori* the *Lacedemonian* State is a tyrannie; and they were ſet up to reſtraine their Kings. It is a hard matter to keepe that liberty with-

Clapm. de Arc. reip. l. 5. Quals Scandali partori in Roma la legge Agraria. Diſcorſi. lib. 1. cap. 37.

plato de repub. lib 5.

plato de leg. lib. 4.

in

in its limits, in any Common-wealth, where it hath the supreame government, & therefore with much difficulty will it submit to be governed by a free Monarchy, especially a Democracie of that new nature, which makes the same persons Civill subjects, & Ecclesiasticall superiours; those Lay Elders that are neither Ministers nor Magistrates, and yet must be governours in the Church, whose jurisdiction doth destroy the nature of a Monarchie. For all publique government in the Church, derived from Christ the fulnesse of it, is either Prophetical, Sacerdotall, or Regall; and they assume not any of these, but the Regall, which is given in charge to supreame Christian Magistrates in a Monarchie; and therefore, if they derive not this power from him, they establish a regiment against him. So that if his power, doth not include theirs, they exclude his; and he having no supereminent power over them, as they impeach his right, to they will enlarge their owne liberty, till it be dissolved into a loose licentious libertinisme: ἡ ἰσονομία ἀναρχία, (as *Polybius* well expresses it.) And if they did not thus, it were the greater vertue, seeing they must have such power unlimited by lawes left to discretion. And they would finde it a hard peece of patience, to abstaine and containe themselves within such bounds of obedience, as this Sate necessarily requires. Can men that professe themselves popular passe plausibly and please the vulgar if they doe not to their utmost uphold them in their highest insolencies? *Tullie* found this impossible when as he withstood the people in *Lege Agraria*, for they cast him off, and clave to *Rullus*, who would bee *popularis* though it were but in *populatione:* and as it cannot stand with the power of our government, so it withstands the honour of our Governour, debasing the Majestie of a Monarchie into a popular paritie, without respect of His most sacred person. In this it is truly Democraticall; for as it was received

polybius Hist. lib. 6.

Tullius in Orat. 2. contr. Leges Agrarias.

ceived for liberty, ſo it muſt be upheld by equalitie: *πάντα* cannot be fully freed without *ἰσότης*, and that is the reaſon that they preſſe a conformitie of our State Eccleſiaſticall with the Apoſtles in meanneſſe of maintainance; (which would bee ſomething indifferent if the Laitie would be under us as they were under the Apoſtles) but yet it would be as farre from a wiſe mans wiſhing, as that equalitie and conformitie which fell upon the *Patriarch*, and *Presbyters* of *Conſtantinople*, when it was ſacked by the *Francones*; and yet that was approved and received by many of the popularity for a happie equality, as *Nicetas Choniates* their moſt rationall Chancellour judiciouſly relates, & reproves their envious madneſſe. *οἱ πολλοὶ ἀγελαῖοι τῷ ἐν πλουτείᾳ καὶ γυναικὸς κακοήθειαν ἰσοπολιτείαν ἀφέρνους ὠνόμαζον*: i. e. many of the *Plebeians* madly miſcalled their miſerie and poverty, by the name of an equality. So that I cannot then conceive how any could apprehend it as a forme likely to agree with this State. This government at the beſt would bee like the ſpleene in the body, which is the ſubject of the dregs and and ſetlings of the humours, as a Democracie is *la feccia della plebe*, and as the ſpleene being not able to moove it ſelfe is not troubleſome ſo long as it is preſſed upon by the heart, but permitted full and equall liberty, nor diſturbed by a *Flatus hypocondriacus*, *κακόηθεσιν ἢ χολὴ πικρὸν καὶ ὀμαλὲς*, but once mooved *πλημμυῆσον δὲ ἢ ἀνωμαλὸν, μὴ δυρύσῃ ἀναπαυσόμενον*, affects the head and heart with turbulent diſtempers; ſo in a Democracie as long as they have all at their looſe liſt, and are not compelled to keepe within compaſſe, but apprehend themſelves equall to the higheſt in all reſpects, and are not mooved by ſome ſeditious ſpirit, they are quiet enough; *Nam multitudo, ſicut mare, per ſe immobilis eſt*; but if once they perceive that any goe about to oppreſſe or croſſe them in their falſe and fugitive liberty (as they are very ſuſpicious upon the leaſt cauſe) they preſently

Polybius Hiſt. lib. 6.

Nicetas Choniates de Satu Conſtantinopolit. Annal. lib. ſingulari.

Guicciardine, Hiſt. lib. 2.

Hippocrates de natura, cap. 11.

Pſalme 65. He ſtilleth the noiſe of the waves, and the tumult of his people.

sently are readie, but *Tentare magis quàm tueri libertatem*: and if any one dare but begin to blow a Trumpet of sedition, (as they do not easilie) *statim ferox erit, si non ad bellandum, saltem ad rebellandum. Nunquam ad contumaciam pari consensu multitudo prorumpit, sed incitantur a paucis, qui ob scelerũ impunitatem sperant peccare cum plurimis.* I doe confesse that this forme of government may be of good use in some States at some times, as in a popular State where these Lay Elders may be both Church and Citie Burgesses; as the Domocraticall *Helvetians* approved it: so also, as for the enlarging of a Monarchie, the Monarchicall is best; so for the setling of a Monarchie that Democraticall may be safest, and so may be the best government when a State is not settled, but newly erected: for then it is not safe to use severitie. As when our State was not fully settled, *Martin Mar-Prelate* dared to vent his discontented humours in salt rumors, as men in rheumes: *In novo & precario imperio non statim jugum rigidum cervici imponendum.* But it is good taming them by degrees, for then a Magistrate hath little power to command, much lesse to restraine; and therefore it hath bin found the best course to let them take their course: for *Mos est vulgo, mutabili subitos, & tam prono in misericordiam, quàm immodicum savitiâ fuerat*: and so by indulgence finde, *Lascivire magis plebem quàm savire.* And *I am perswaded that this discipline* (so farre as it agrees with the more private Primitive temporarie orders) *was onely chosen for that time when the Apostles were under persecution*: and there were no Christian Magistrates to repaire to for justice: then they appointed some to judge betwixt brother and brother. But it doth not appeare that they were Ecclesiasticall Judges, certainly no such Lay Elders in the Apostles times as the Separatists now plead for, but rather civill arbiters to make agreement betwixt them in civill controversies, (as may appeare out of the place)

Idem Ibidem.

Veget. de re Militar. lib. 3. c. 4.

Machiavellus. lib 1. cap. 5.

Curtius Histor. lib. 5.

Tacitus Histor. lib 1.

Livius l. 11. Histor.

place) though the author of the Historie *Concil. Tridentini* make that a ground for Episcopall jurisdiction. For the Apostles had no reason to delegate the cognizance of spirituall causes, because in those daies they were so few, and needed no proofe for the discoverie of them; because they had the gift of discerning of spirits, and of knowing of secrets, and of prophecying. And I do not beleeve that it can be proved that they gave commission to any to receive accusations, (which is much lesse than to give judiciall censures & decisions) but to the Bishop of *Ephesus*: but I intend not to enter into controversies, neither need I, seeing so much hath beene already written in that point to good purpose by many most reverend Fathers of our Church. But to return to my intended discourse; this State of the soveraigntie of these seniors I grant to be of some use in free Cities in time of tumult; and so I do beleeve Mr *Calvin* intended it, yeelding to a popular paritie, and not as an universall perpetuall government for all truly reformed Churches. For though such a wise respected man as he was, might, during his time, preserve it in the same correspondent conformitie to his proposed pattern; as *Polybius* saith of the *Thebane* Democracie ἐκ ἡ τῆς πολιτείας σύστασις, ἀλλὰ ἡ τῶν προεστώτων ἀρετή, it stood not by the good temper of their policie, but by the vertue of their governours Επαμινόνδου, καὶ Πελοπίδου: so might it be said of the *Geneva* Church-government, that though, for the tumultuousnes which transgressed the bounds of lawfull subjection, many were the rulers of it, being a Democracie: yet by a man of understanding and knowledge, the State thereof was prolonged: for he could do much to appease seditions: as *Franciscus* Bishop of *Volterra* sooner settled a tumult in *Florence* by his grave presence, than the Magistrates could by the weight of their authoritie. It is plaine then out of this that hath beene spoken, that this government by popular Presbyterie is not for this State.

1. Cor. 6. 4. 5. *Histor. Conc. Trid. l. 3.*

1. Tim. 5.

Polyb. lib. 2.

Nil magis ægris prodest quàm curari à quo volunt.

Seneca Cont. 5. Machiavellus, lib. 1. cap. 514.

§. 6.

§.6. Neither of these being convenient, & there being but another, and it hath alwaies beene the government in this State; it must necessarily follow without any more proofe, that this is most agreeable with the Civill. Those that are no well-willers to our State have strucke at our Church-government, with which there is such a happie hartie unitie, as dare bid the world doe as shee would be done to (as that absolute States-man the Earle of *Salisburie* replyed.) And it is no marvell, since it is not onely the Primitive ancient government of the Church in generall; but the onely forme also that ever was received in this State, according to the ancient lawes of this Iland, though it seeme to be brought in under *Henry* the eight, when it was onely reformed from the evills, and restored to the former State: for our Clergie was not of right subject to the Pope, neither as he was Patriarch of the West, nor in his ancient province. And this Aristocraticall forme hath most happie qualifications that dispose it to the peace, profit, honour, and safety of the State. I could now wish with *Tully* when he was to write against *Democraticall Agrarian* lawes, *Vtinam Theophrastum* περὶ φιλοτιμίας, &c. *Vbi multa scribuntur* Ἀριστοκρατικῶς; that I might make a perfect parallell. After this Kingdome with many others had long laboured under a lingring consumption, being continually sucked, & in a manner exhausted by its continuall supplying of the Popes exchequer, which drew away the vitall spirits, weakned the sinewes of warre; causing extensions and convulsions: and farther also in respect of Domestique peace, it had not a just proportion of power to exercise its only civill and lawfull authoritie: insomuch that many who should have knowne what in possibilitie of State might be done for the recoverie of a temporalitie, distempered and distressed by the malignant humerous power of an usurped spiritualitie, like a fever in the spirits caused by obstruction. All those men gave it

Answer to scandalous papers.

By B. *Bilson* of Christian subjection *part.* 1.

Ad Atticum, lib. 2. *epist.* 3.

Πνευματώδης. *Hippocrat. lib.* 5. *prog.*

over for desperate, some conceiving the disease incurable in its owne nature, because that, *non obstante* the helpe of so many strong Statutes & purging privisors, the distemper was as violent, and more virulent than before; & they saw no safe and certaine course of preventing physick, for it was so far spent, as that it seemed to have passed the period of curing: after this I say as when men are brought to a desperate point they will trie conclusions, and they that drive them to it do often repent it: (for *Cum spei nihil est sumit arma formido*) so the Pope putting and passing our State upon desperate hazards, forced it to trie its strength, which is soone found; necessitie driving, and opportunity drawing: *Acerrima virtus est, quam ultima necessitas extundit*: & so it cast such an unreasonable unrulie rider, who thought, (and so did all Christendome) that he had sitten closer & faster upon our skirts, & would not beleeve that it was possible for a Parliamentarie power representing the State, ever to have been able to dissolve the great Abbies, (though they durst fully resolve it) untill they saw them begin with the little ones; then they had reason to grant it possible: οὐδὲν γὰρ ἄρχεται γίνεσθαι τῶν ἀδυνάτων, (i.e. nothing that is impossible was ever begun) yea they found it fully finished, & that on such a sudden, that as it wrought admiration in the beholders, so it procured safetie to the actors. For in actions of that nature, haste only makes good speed. That the event of this action was good, is proved by the deliverance of the State. But for the action in it self considered, as I do not discommend it, so I will not condemne it, because I am not able to sift and search into the circumstances of it; but I will onely say thus much of it; Those actions that aime at, and make great alteration, though to the best, doe seldome keepe a mediocritie, especially in respect of that part of the Common-wealth, which is the subject of the alterations: as a strong, stirring

Vegetius de re mil. l. 3. c. 21.

Senec. de Clement. l. 1.

Arist. Rhetor. l. 2. c. 20.

ring *Chymicall* ſpirit-purge doth in a naturall body, that ſtirres up more than could bee mooved, and purges out good, as well as ill humours. But no ſooner was our State thus delivered from under the tyrannie of the Eccleſiaſticall Monarchy, but it as ſoone pitched upon the Ariſtocraticall government, as ſuitable and fitting beſt with the weale-publicke. And as all the Chriſtian world did then in ſincere judgement of State, *rebus ſic ſtantibus*, approve their choyce, ſo wee have ever ſince found the happy effects of it, in the ſafety, honour, and treaſure of the State. Conſider it firſt, how it wrought little or no alteration in the receiving, being according to the lawes, taken by their owne choyce, reſtrained with the limitations of the Civill State. For all the turmoyle and toſſing tumult, was onely in caſting out the other forme; as a privation, before the induction of a new forme in naturall bodies. It was received without force, as moſt naturall to the Civill State, and no other could have beene brought in with ſuch certaine good ſecuritie of the State: for the Monarchicall at that time could not bee received, but either upon their repentance of what they had done, and by procuring of a pardon from the Pope, (as it was in Queene *Maries* dayes) or elſe by helpe of forraine force, joyning with domeſtick rebellion, as was often attempted. But this was not any thing ſafe for the Kingdome, as is already proved. And for the Democraticall diſcipline, there was great and certaine danger in receiving of that, for it could not poſſibly be conceived to bee received, but with a ſchiſmaticall ſedition, ſince it was approved but by a faction; and doe but conſider, how dangerous ſeditions are in an ancient kingdome; if it were now a ſetling, happily the vigour of youth would beare it out; as one maine reaſon (as I conceive) why the *Roman* Monarchy was not ruined by thoſe foure firſt grand-ſeditions, was becauſe it was but *ſecunda ætas*, *& quaſi adoleſcen-*

Hiſtor. Concil. Trid. lib. 1.

Lucius Florus lib. 1. cap. 22.

adoleſcentia: But when a State is growing old, ſeditions are deſperate courſes to procure changes, though it bee for the beſt. For though the events of them be but doubtfull, yet the deciding-place is certaine of loſſe. But for this preſent forme, as it re-entred without a State-earthquake, without any ſhaking of the ground of the Civill government, ſo it hath ever continued peaceable, and a pacifier of growing differences, being the middle State of three, carrying it ſelfe as a moderating Mediator betwixt the King and the Subjects. And all this good, and much more proceeds from the temper of the forme of government. For it is the only forme fit to be under this Monarchie, becauſe it will onely be eaſily ruled and ordered by the State, when as both the other will rule where they are entertained, although after a divers manner; one having dominion over the Civill, the other without it. But this is under the Civill, in relation to the head: and in it, in relation to the body. And as it is eaſily ruled, ſo it will not eaſily bee diſordered, as the other will, though they ſhould ſubmit to be ruled for a time, till they bee able to reſiſt. For ambition is ſo perniciouſly provident, that it will be ſomething able to reſiſt the power of its oppoſite, to get from under it, before it trie to goe about it. Firſt, taking care not to be oppreſſed, before it endeavour to oppreſſe; for all the branches of rebellion, are rooted and hid in the depths of diſſembled diſobedience. But this is not ſo enclined; for if any forme of policie degenerate, it muſt be either into a tyrannie, an Oligarchy, or a diſſolute Ochlocraty. Now an Ariſtocracie cannot be immediately diſſolved, either into a tyranny or a tumultuous popularity. And it is not eaſie to conceive, how it ſhould by any meanes, by the courſe of State-corruption, ever degenerate into a head-ſtrong popularity of its owne accord, without externall force. And as little reaſon there is, why this ſhould advance it ſelfe to a tyrannie,

tyrannie, by turning the Church into a court, & Religion into a vaſſall to ambition; for it muſt be firſt reduced and reſtrained into an Oligarchie: and there is no great reaſon in this point, to feare the Clergie in this Kingdome, all things conſidered. It is true (as all Hiſtorians and Politicks obſerve) that an Ariſtocracie is ſubject and prone to be corrupted into an Oligarchie: But doe but obſerve the end of an Oligarchie, and you will find, that our Ariſtocracie can have no ſuch ayme; for their end is, to grow rich, as the States of *Venice*, and the *Belgicke* Provinces, and their Counſels drive at that end, *ἐν ὀλιγαρχίᾳ βυλεύονται πλουτεῖν*: and according to this end, and this Counſell to it, hee that will prevaile in perſwading with them, muſt deliberate; *in libera civitate, non ut apud reges, qua deleſtant, ſed qua proſunt ſuadenda ſunt.* But our Eccleſiaſticall Ariſtocracie is not to bee perſwaded, having no ſuch Counſells, becauſe not the ſame end; only they may bee rich, if they did deſire it, becauſe being poore, they are a fit ſubject of wealth. The poverty of this Clergie hath charmed it againſt active ambition, ſo that one of the *Optimates* doe not looke higher than his Peeres, ſet with him in equall power and honour, in relation to their ſeverall Dioceſſes, though the power of juriſdiction bee in ſome caſes larger, in the Provinciall Prelate: *Nemo noſtrum Epiſcopum ſe Epiſcoporum eſſe dicit, neque tyrannico terrore ad obſequendi neceſſitatem, collegas ſuos adigit*: So that *per accidens*, the impoveriſhing of the Clergie in *Henry* the eight, when it ſeemed in the eye of ſome too rich for the Civill State, did this good, to preſerve them from an Oligarchie; even as to take ſo much bloud away in a pleuriſie, as to bring a man to a deepe conſumption, is a probable preſervative againſt dying of a burning fever. So that alteration of this State is not much to be feared, in reſpect they have no reaſon to alter it; and withall it is not eaſily altered, if they had this or any other ground

Earle of *Salisbury* his anſwer to ſcandalous papers.

Ariſt. Rhet. lib. 1. cap. 8.

Sen. Suaſor. 1.

Auguſtinus contra Donat. lib. 4. cap. 1.

ground to doe it. For an Aristocracie in it selfe considered, is a government of a most constant, continuing constitution, especially when it is mixed and tempered with a Monarchy. For the reason of its constancie is not onely the slowneſſe of the motion, either to augmentation or diminution, like a great engine mooving with many joynts, in which point a Monarch will much advantage in advancing & setting faster forward, if not their deliberations, yet their determinations; and with ease and speed stay all their errours and declinings, while they are but in the breedings, beginnings, and begettings; but then also the force of their factions (which breaking out, are the common ruine of Aristocracies) will bee abated, as it may bee seene in the *Spartane* and *Venetian* States, opposed to the *Athenian* and *Florentine*. For these had an Aristocracie without a Monarchie, and were continually tossed with seditions and factions. As that long lasting faction of the *Guelfes* & *Gibellines*, which could never be fully taken away, but by the ruine of one partie; when as the *Venetians* their neighbours (whose Duke was then not a *Simulachrum imperij*) kept the faction out of their Common-wealth, though they did declare themselves sometimes on one side, and sometimes on another, lest they should have beene hated of all, as negligent neutrals; but they did not nourish the faction amongst themselves, but maintained it in other Countries, as they would doe warres. Neither could the State of *Millaine* bee free from it, untill it was extinguished by *Francisco Sforza*, who was a free Prince though an usurper: so that the mixture of a Monarchie, and the predominancie in an Aristocraticall State, doth not onely make it actively more able to offend, but more passively powerfully defensive, not onely by preventing and preserving from domesticke dangers, but also by recovering it out of them. *And our present State Ecclesiasticall is thus mixed*: (For I doe

Sigonius de Repub. Athenienſi lib. 1.

Paulus Iovius. hiſt. lib. 6.

Bellar. lib. de Summo Pont. cap. 3.

do not urge a strict Aristocracie; Ἀριστὸν οὐ πάντα Ἀριστοκρατικῶς πονεῖν, as *Aristotle*) and therefore hath the best means of conservation in respect of the forme. And it hath one more prevalent preservative in the *Optimates* themselves, which is, that they are strongly disposed to this kinde of government, not onely by being of quiet contemplative natures, but also by being trained up under an Academicall Colledge-government, which doth first possesse them and fully please them, and is Aristocraticall, having the proper aime of that forme of government; τὸ τέλος Ἀριστοκρατίας πρὸς παιδείαν, discipline according to law, is the end of that forme of government. And they then that aime at that, are most likely to preserve it, by persevering in their intentions; when as others that will devise new platformes, and seeme wiser than the lawes, do suddenly subvert or disturbe this most safe and setled forme of government. Witnesse the *Athenians* and the *Florentines*, who being of a stirring over-active temper, and alwaies doing, though it vvere to the undoing of things well done, changed this forme of State seven times; (which corrupting transmutations, I hope *Machiavell* their Country-man doth not call and commend under the termes of reformation, and reduction to their primitive principles, without hee will grant their prime originall order to be raised out of confounded confusions.) When as the *Venetians*, who have beene calme and cold, and constant in provident proceedings, have kept to the same forme without any fundamentall alterations, and that because they will be ruled by lawes; whereas the *Florentine* is so overweaningly wise, that hee thinkes he should Emperour-like rule and make lawes: ἀρχικὸν τὸ φρονεῖν. So that *Bodinus* judgement of them and the *Neopolitans* is true; and approves him to be a most rationall Statist; *Dignos se esse imperio singuli arbitrentur, ad populare imperium magis quam Optimatum inclinati.* But suppose

Arist. Rhet. lib. 1. c. 28.

Thucidides l. 3.

Machiavellus l. 3. c. 10.

Contarenus de Rep. Veneta l. 1.

Arist. Rhet. l. 1. cap. 11.

Bodin. de Rep. l. 5. c. 2.

poſe this government ſhould be diſordered, it is eaſilieſt reformed againe, which is a point of very great ſafetie, it may be done without any ſtirres of tumults, and ſpeedily, for it hath not that power to reſiſt authoritie, which the other two formes have; and that becauſe it uſeth not the meanes they doe to procure it. For the Monarchie of the Church of *Rome*, and the Democraticall diſcipline, ſtirre up the vulgar, and rely and reſt upon them for aſſiſtance, and defence, and therefore they endeavour to wooe and winne their hearts, that they may uſe their hands and purpoſes: yet they do it divers waies: as the *Romaniſts*, amongſt many other wayes, they get into their hearts at their eares by auricular confeſſions; they hold them by their eares, yet not ſo much by the confeſſion of of their ſinnes as of their ſecrets, under the colour of caſes of Conſcience; which abuſe of that wholſome counſell of the Church hath made many doubt of, and ſome condemne the good uſe of it, and ſince that was laid downe, and confeſſions caſt off, all kindes of ſinne have infinitely abounded: even as the *Perſians* after they had by their *Septemviri* cut off the *Magi*, that uſurped too much temporall power under the pretence of their ſpirituall authoritie, and then kept their feaſt called *Magophonia*, never after ſolemnized their great and good feſtivall called *Vitiorum interitum*, which conſiſted in the killing of ſerpents, and venomous hurtfull creatures, & the ſacrificing of them up to the *Magi*, expreſſing by way of Embleme the deſtroying of vice in themſelves, with the ſolemne ſignification and confeſſion of it to them to whom they were to give an account: and by their eyes alſo they faſcinate their fond fantaſies with ſuperſtitious ceremonies, exquiſitely intricate, full of myſticall and magicall mazes, broached by fancie, continued & countenanced by fables, conſiſting in the maſſie materialitie of bodily exercile, as may be ſeene in the auſteritie and State of an *Auſtrian* penance,

Briſſonius de regno Perſico. l. 2.

nance, or in a Pontificall profession, where all is done with such concealed secrecie and silence, that nothing is prostituted to be polluted by the unsanctified view of the vulgar. Thus by feare mixed with delight in superstition, they can lead them as they list, and engage them in their quarrels, and bequeath to them their dangers they have pulled upon themselves. The Disciplinarians are not only endeered to them, for the forme and frame of their government, & for their novelty, but they make use of superstition also to hold them, and to have them at their becke, but in a course cleane contrarie to the other, for they undoe all the other have done, in point of ceremonies, without consideration whether it be good or bad, and that out of a superstitious rage, as the other did out of feare: (for superstition is grounded upon either of those passions.) And as their feare was mixed with pleasure in the end, so theirs is mixed with profit, when in the destroying of the superfluitie of superstition they enrich themselves with the spoyles, & save charges in ornaments. Which prophanes of theirs, is in some respect worse than their superstition, & it many times ends in Atheisme. For though they were consecrated after a false manner, yet they were dedicated & devoted to the true God, & should not be prophaned to common use, but sanctified by a new and true consecrations as well as the Churches wherein they were. Thus those formes of Church-government have power to withstand the reforming rod of authoritie. But our present State useth no such meanes to stand out in rebellion, because if it offend, it rather proceeds out of weaknesse than wickednesse; from scholasticall indiscretions that deserve, rather pittie than punishment. For it is not likely, that they would disturbe the State, who shall certainly lose that little they have by it, rather than get more: *Miles qui scit sumptus suos apud signa depositos nil cogitat de seditione* *Vegetius de re milit. l. 2. c. 20.*

Thou that abhorrest Idols committest thou sacrilege? *Rom. 2.*

seditione aut fuga. I find, that amongst those Prelates that have troubled & turmoyled kingdomes, *Rome* pretended successours have onely gained by fishing in such troubled waters. And as they can have no end worth their stirring, so their naturall inclination is not so pernicionsly pragmaticall, they are farre from the tricks of troubling projecters; & all actions proceed either from our generall end, or particular inclination; & this inclination is fortified & confirmed, if not formed & framed, by their studies, which have a great influence into the disposition. I have not, in this discourse, entred much into the commendation of an Aristocracie in generall, preferring it before a Monarchie, partly because I feare lest some should serve mee as *Castelanus*, a *French* Philosophie-reader (who as I conceive, was *Ramus* his Tutor) served his Antagonist *Bigotius*. For when *Francis* the first was desired by some of his Nobles, to read *Bogatius* his Disputations. *Castellanus* told his Majestie, hee was an *Aristotelian*, and *Aristotle* preferred an *Aristocracie* before a Monarchie, and so took off the Kings affection from him. But hee might be so excused, because I do not believe it was *Aristotles* judgement, but his policie, to dissuade all others from affecting it, that his Master *Alexander* might effect it. But I do purposely forbeare it, because it is not my proposition, that an *Aristocracie* is simply a more convenient forme of State than a Monarchie; but that this *Aristocracie* is more convenient for this State at this time, considering that it was received with an universall consent and desire of all, and hath its rights according to the lawes, is most easily ruled by them, not easily nor suddenly disturbed or disturbing, and most easily reformed if it be disordered: so that I may now undeniably conclude, that the present State Ecclesiasticall is most convenient, and best agreeing with the Civill.

Ars Iesuitica est Monarchismus practicus, Baricus de arte Jesuit. introduct.

Thuanus hist. lib. 6.

A

A DIGRESSION DISCVSSING
Some ordinary exceptions againſt Eccleſiaſticall Officers.

THough none bee more loath and feareſull to come within the liſts of controverſies; yet ſeeing all that I have already poſitively diſcourſed, is not onely controverſed, but alſo contradicted by theſe exceptions; I reſolve to diſſolve and diſpell them, leaſt they ſhould by a darke reflexion cloud my cleare proceeding. And I am not a little confidenced in my purpoſe, when I conſider whoſe cauſe it is that I undertake, even the moſt able advocates of the Church, ſuch powerfull pleaders as are infallibly ſufficient to defend both their cauſe, and me their poore defendant; for they are abſolutely able (if their conſcience would but diſpence with their underſtanding) to make a bad cauſe, if not good, yet plauſible by putting it in a good caſe; ſo that I am encouraged to undertake it with this conſideration; that where I am found weake and wanting, they are ſufficient and ready to ſuccour and ſupply; if they ſhall apprehend the exceptions peremptory and pertinent, and any impeachment to their practice and power. As they that have made tryall of their ſtrength have found, though they were of the ſtrongeſt & moſt popular partie, which they the more wondred at, ſince they knew they had but few friends, and themſelves ſmall

D. *Couſins* his apology for proceeding in Courts Eccleſiaſticall.

ſmall in number, eſpecially in the beginning of the reformation where there was ſuch ſcarcitie of Civilians, that the Univerſities tooke little notice of their degrees or profeſſion, or the Courts of their practice: but now we have a moſt happy and hopefull increaſe, and it were to bee wiſhed that the Land were more ſtored with able Civilians, though they be not pragmatiques; I meane that the knowledge of the Civill law were more regarded, though the practice keep but the ſame degree of reſpect; for then ſhould wee have more able Common-wealthes men at home, and more abſolute States-men abroad: for all the Nations round about are ruled by the Civill law, as we are by the Common law: onely they have ſome particular decrees, manifeſtations, and ſanctions, as we have ſtatutes and Acts of Parliaments: and ſo by that law the treaties we make for matters in queſtion are to bee decided by that law: that which is determined by conſultation, and agreed upon, is to bee concluded: ſo that it muſt needs be, that hee that is well ſeene in the Civill law is beſt able to treat with them with more honour & leſſe danger to the State; for in them there is onely the feare and danger of perfidiouſneſſe, whereas the other may want honeſty and ability both, though their inſtructions bee never ſo punctually accommodated. And this is one maine reaſon (as well as the Popes power) why many Deanes, Biſhops, and Lord Chancellours, who were Doctors of the Civill law were ſent Embaſſadours, when the Nobility had not ſo much law and learning as now they have; ſo that for this laſt preſent age we have not loſt ſo much in treating with *France*, where the Civill law is moſt practiſed, as to confirme or continue the Proverbe which I finde mentioned in *Phil. Cominæus*: *Pactio nulla inter Gallos & Anglos*... in which the *French* did not get the better, *adeoque proverbio dicitur apud Anglos, quoties cum Gallis prælio certaverint, victores ſternunque fuiſſe, quoties verò cum illis pacti*

Comment. Lud. 11. lib. 4.

pacti sint detrimentum semper aliquid accepisse, which was most verified from the time of *Edward* the 3^d^, to Queene *Elizabeth*; but it is probable their over reaching was much helped forward by dishonesty, where they found any little want of ability: but grant it were the disability of our agents, especially in the ignorance of the proceedings and advantages of the Civill law in businesse of trans-action, wherein the *French* were defendants and passive: yet it was not an honourable advancement to them, though it were some small disavantage to us: for it is a dishonour for a Prince to stand strictly upon termes, tricks, and turnings of law in the interpretation of treaties: as *Maurice* Duke of *Saxony* told *Charles* the fift, when contrary to agreement, he detained *Philip Lantgrave* of *Hessen*: *at ego* (saith he) *te tanquam imperatorem, non tanquam juris-consultum & legistam, volo pactiones & fœdera interpretari.* But since treaties are too often so interpreted, it is in all probability a great assurance of safety in treating to understand the Civill law, at least in the proceedings: and hence it is, as I conceive, that in *France* and *Italy* it is so much esteemed, so that in *France* most of the ancient Nobility were students in it, and had amongst other priviledges, that they may take the degree of Bachelour at law in three years, as it is plaine in the Pragmaticall sanction: which particular is also confirmed by the *Concordata Gallia*, by *Leo* the tenth. *Baccalaureo juris Civilis si ex utroque nobilis, triennium satis erit.* In *Italy* also it hath beene highly esteemed, especially in the first reviving of it under *Lotharius secundus*, in the yeare 1125: who found a copie of the Digest and gave it to the *Pisans*, which was then called *litera Pisana*: but when the *Florentines* tooke *Pisa* (as *Laurence de Meditis* told *Politian*) it was translated to *Florence*, and make *Pandecta Florentina*: *ibi verò in curia loco celeberrimo summâ religione servatur*; and they did not use in those dayes in the first erecting of

Carolus Molinæus consilio secundo in causa Philip. Landgr. Hassiæ.

Prag. sanctio tit. de collationibus.

Concordat. Gallia tit. eodem.

Angelus Polit. lib. 1. epist. 4.

their Dukedome, to eſteeme any thing which they found not beneficiall for the State. But I leave the commendation of the knowledge of that Civill law to thoſe that know it better, and have found the helpe of it in long publique practiſing; and betake my ſelfe to my underſtandings, to diſcard ſome exceptions againſt the profeſſours of it, who are Officers, practiſing in Eccleſiaſticall affaires. They are excepted againſt by ſome that are of the faction of irregular Proteſtants.

Exception 1. That though the Church of *England* approove not the *Geneva* diſcipline, yet the principall point is practiſed in it; in theſe our Lay Elders. Thus they ſeeke to diffame our government, by reporting it to be confuſed and wanting uniformity. But to diſcuſſe & diſcover this groundleſſe exception, the very ſuppoſition whereon it is grounded is abſolutely falſe; for though we will not deny that our Eccleſiaſticall Officers bee Lay men, yet we will not grant them to be Elders of the Church: we have no ſuch Church-Burgeſſes, neither doe they take any ſuch Elderſhip upon them, ſince they know full well that it belongeth onely to ſpirituall perſons; which they confeſſe and profeſſe they are not: as that profound Civilian Dr *Couſins*, *We are no ſpirituall perſons, as ſome tearme us, but Eccleſiaſticall*: now in my underſtanding there is as much difference betwixt a Spirituall perſon and Eccleſiaſticall, though he be a Canoniſt, as betwixt *Eccleſiaſtes* and *Eccleſiaſticus*; the one of which is Canonicall, the other Apocryphall. I dare then without any ſcruple grant them to be Lay men; not onely becauſe it takes away the ground of the exception, but alſo becauſe it is not any hinderance to their being Eccleſiaſticall Officers: for the Canon law, which is very ſtrict in this point, admits a threefold diviſion of Eccleſiaſticall perſons: as, *primò, in ſacris; ſecundò, in ſacris & ſacerdotio; tertiò, nec in ſacris, nec ſacerdotio, ut monachi & legiſta eccleſiaſtici*: and ſo doe the chiefeſt

Dr *Couſins* his apologie for proceeding in Courts Eccleſiaſticall. 3 *part. cap.* 16.

chiefest among them account themselves, for they are well contented to go for Commons in the high Court of Parliament. Yea a most eminent Chancellour of late refused when his Bishop would have chosen him a mēber of the Convocation-house, and that because hee held himselfe a Lay-man; and so they live in our particular parishes as other Lay-Parishioners, paying Church dues, and are alike subject to the jurisdiction of their appointed Pastours in *foro conscientiæ*; and in thus doing they do declare their exact knowledge in the Canon Law, and pure practice of the Civill: for by the Common Law where *Doctores divini & humani* are opposed, Doctors of the Civill Law, yea and Canon also, are counted *humane*, and Lay Doctors: for the Clergie (as *Brissonius* defines it out of *Suidas*) is Σύστημα τῶν διακόνων καὶ πρεσβυτέρων. But fully to cast off this exception, I deny them to be Elders of our Church; for Elders here I understand in relation to Church-government, and in that sense there are no Elders with us in our Church but our Ordinaries; and our Ecclesiasticall Officers are not Ordinaries, neither do they usurpe any such power; but their modesties are many times forced to take the tune of the title from some obnoxious fawning Clergymen, who are more sordidly slavish than they would have them: insomuch that though in discretion they will not say to them as *Tyberius* did to the servile Senate, *O homines ad servitutem paratos!* yet they cannot chuse but thinke so; for they know that by the Canon Law there is no Ordinary *Iure* but a Bishop; *per Ordinarios Iure intelligimus Episcopos*; neither any by priviledge and custome but a Deane, or an Archdeacon. And they do as fully understand that in this Church there are none but what the Canon Law allowes: as S. *Thomas Smith* in his discourse of the Common-wealth of *England* saith: by an Ordinarie wee understand a Bishop, or sometimes an Archdeacon, or a Deane, who are so by priviledge, or a long prescribed custome.

Guymer Comment: in prag. sanction: proœmio.

Brissonii Lexicon, 11.

Tacit. Annal. Lib 3.

Extrav. Iohan. 22. d. prabend. & dig. c. execrabilis. §. ceterum.

Lyndewood provin. d. constit. c. exterior. verb. Ordinarii.

Sir Thomas Smith *de reb. Ang. lib. 3. c. 8.*

custome. Now they are not Archdeacons, nor Deanes, as I would they were, and many of them have beene heretofore, as *Petrus Blesensis* Archdeacon of *Bath*, who was Chancellour of *Canterburie*, and Chaplaine to *Henry* the second: for then this exception and all others would be of no force. So that they are no such Ordinaries as are Church Elders within us, I will grant them in a large sence to be Ordinaries, (as *Guymerus* the pragmatique) *Ordinarios latè volo collatores beneficiorum, & Patronos Ecclesiasticos*, (as *Glanvill* calls Patrons) *Advocatos Ecclesiæ*, in such a large sence as may be extended to these Ecclesiasticall Officers: but Ordinaries properly they are not, and that appeares out of the offices they execute in relation to these Ordinaries, for they are their Deputies, Delegates, Vicars, Officialls, or Commissaries, which are officers distinct and derived from their Ordinaries: of all these the Bishops Vicar hath most reason to be tearmed an Ordinarie, and yet hee is none: not onely by the Civill Law which makes him a Minister of his Ordinarie, *Vicarius est qui suo Ordinario subministrat*, but also by the Canon Law, (as *Prateus*) *Vicarius & Ordinarius distinguuntur, nam Vicarius est quasi servus in peculio*: (or as *Suidas* calls him) a substitute, Βικάριος παρὰ ῥωμαίοις διάδοχος: and *Panormitanus*, *jurisdictio Ordinario non extinguitur per mortem illius qui dat, jurisdictio Vicarii est suspensa suspenso Episcopo*; and *Durantus* affirmes as much *Vicarii nequeunt officia sua exercere Episcopis eorum excommunicatis*, and therefore they do well in claiming no such power, as Sr *Thomas Ridley* learnedly discovering the originall and reason of their practice in the Church, concludes, that Civilians or rather Lengists, who were anciently called Church-Lawyers or *Ecclesiecdici*, were brought into the Church to direct the Bishops and the Chancellours, at this day are the very same in office with them, being assistants of the Bishops in their jurisdiction.

Comment. in prag. sanction. tit. de collat. §. Ordinarios.

Glanvil. l. 4. c. 1. Clericus possit esse Advocatus in puris Ecclesiasticis, sed rarò, non ordinariè, ut Aug. de Ancona de potest.

Pp. q. 112. Itaq. Brissonius Lex. verbo Vicarius. Prateus Lexic. juris Can. verbo Vicarius.

Panor. in decretal. de jurisd. Durantus in specu. lib. 1. par. 1. tit. de judice delegato.

Sir Thom. Ridleyes view of the Ecclesiasticall and Civill Law.

And

And S. *Francis Bacon* in his cautious consideration of Church government, agrees with him in the approbation of a Bishops being attended by his Chancellour, who should be learned in the Civill law for his better instruction in points of formalitie, in the proceedings & courses of their Courts. And for the same purpose should Deanes and Archdeacons have their Officialls and Commissaries to inable them to runne through the multiplicity of causes, to cut off or shorten delaies, which in all businesse, especially Ecclesiasticall, are tedious and odious: and indeed none are moreable in this case to assist them, and reduce causes into order, brevity, and paucity: So that wee may safely say of them in this point as much as *Thomas Aquinas* said of his *Summa Theologia, viz.* That hee compiled his *summes* to compose & compound controversies, to take up and take away all questions: so were they received into the State Ecclesiasticall to helpe and hasten in proceedings when causes spirituall were multiplied and involved. And therefore I doe not a little wonder at Dr *Cowell* who was a most able Civilian, that hee should account Commissaries or *Officiales foraneos*, only usefull in pettie peculiars, exempt from the jurisdiction of the Archdeacon, otherwise to be superfluous & a needlesse vexation and oppression to the Country: surely hee meant it of some such scandalous Courts as *Duarenus* (another learned Civilian) complaines of. *Auditoria Vicariorum & Officialium Episcoporum, quacunque profana tribunalia, imposturis & strophis forensibus, longè superant*: but let him thinke what hee will, I am sure we see of what good use they are, and yet they are not Lay Elders of the Church.

Sir Francis Bacons considerations to his Majestie. 2.

Officialis non dicitur ab officiendo sed efficiendo. Lynwood l. 2. de sequestris. v. officiales. prin.

Thomas Aquin. præfat. ad summas.

D. Cowel. interpret. verb. Commissary.

Duar: de ben. & officiis Eccles.

Except. 2. Is, that the power of jurisdictiō Ecclesiasticall, cannot be granted to Civilians, that are meere Lay-men.

Exception 2.

I could soone answer this exception, by denying them to be meere Lay-men, and so I would, if I had no other

way to avoid it. But I am willing to give them satisfaction, and not to cavill, and therefore will answer punctually: and that I may so doe, and they so apprehend it, let them but consider with mee a two-fold power of Ecclesiasticall Jurisdiction, Ordinarie and Delegate; the latter and lesser of which, may be lawfully granted to them; especially, if wee admit the differences and degrees of their commission, which are approved and practised in our Church-government; both in relation to the power that grants them, and in respect of the extent of the grant. First for the power granting them, they are all originally derived from the Crowne; but some have their power more immediately, as the high Commission have it under the broad Seale, others receive it more mediately from their Bishops, Deanes, or Arch-Deacons: so for the largenesse of the Commission, which is *ad universitatem causarum tanquam Ordinarius*, as the audience of high Commission and not without good reason, since no cause is to be there entered without the processe be subscribed by one of the *Quorum*, (which must be, as I am informed, Bishops:) There is also a speciall Commission of *Oyer* and *Terminer*, in some particular causes: and lastly, a Commission, which, according to Law, is *restricta ad instantia*, which *Lynwood* Officiall of *Canterburie* saith, doth belong *officialibus principalibus*, which wee call Chancellours: Yet I doe not beleeve (by his leave) that they are so restrained, as to a bare cognition, without a definitive sentence, though the phrase, that is used to expresse businesse of *instance*, be matter of Ecclesiasticall cognizance: for, *Cognitio non est jurisdictio*, especially now since the Lawes have ordered, that if they be not in sacred orders, they must be assisted by a surrogate, who is a Minister, and hee is to pronounce sentence as principall Judge, which practice hath made some of opinion, that anciently they were assistants

Lynwood provine pralatis vices, &c. ut omnia verb. ad firmum.

Lynwood provinc. frequens. de sequest. verb. officialis.

Cujacius in l. 2. de orig. Jur. Civ. §. Consul.

ſiſtant to the ſurrogate, as aſſeſſours; which ſeemes probable, becauſe the exact knowledge of the law is expected from an aſſeſſour, not from the principall Judge (according to the moſt conſcionable Caſuiſts:) *Ignorantia juris non eſt peccatum in judice, ſed eſt in aſſeſſore*; as in the Maſters of the Chancery, who are aſſeſſours to the Lord Chancellour or Keeper, there is required exact knowledge, though not in the ſuperiour Judge; as in the aſſeſſors of the Prætor amongſt the *Romans*: *Si Prætor per imperitiam juris iniquum jus ſtatuerit, non punitur; aſſeſſor ejus punitur, quia adſeſſor ſo pro juriſperito agit*: So that though this opinion bee not true, becauſe ſurrogates are not of ſuch antiquity, yet I perſwade my ſelfe without any doubt, that they were, and ſtill are *tanquam aſſiſtentes aſſeſſores Epiſcopis & Archidiaconis*: though they have alſo a delegated power. And this kinde and degree of Eccleſiaſticall power may be granted to them, though they be meere Lay men: and I beleeve our Church would not have diſliked the *Geneva* government ſo much, if they would have choſen ſuch for their Lay-Seigniours, as had knowledge in the Eccleſiaſticall lawes: as if Doctor *Hottoman*, Profeſſour there, and Reader of the Civill law, had beene joyned with reverend *Beza*, then Divinity Reader.

Navar. de pecc. Iudicis. § 7.

Cujacius obſer. lib. 23. cap. 40.

Another Exception of like nature and moment, ariſing from the former, is, that under the colour of a delegated juriſdiction, they take upon them Epiſcopall juriſdiction, and performe all the offices of a Biſhop, in relation to Eccleſiaſticall government. *Exception 3.*

This Exception is not peremptory, but dilatory and declinatory, full of impertinent ſurpluſſage, urging nothing, or that which is falſe; for no man will undertake to anſwer what they doe, but what they ſhould doe: *jure noſtro Eccleſiaſtico*, I am ſure *jure noſtro Canonico Anglicano* publickly knowne, and by the Old Canon law

which may here be practiſed, (where it is not contrary to
25. Hen. 8. c. 3. the lawes of the Land) they are not to exerciſe any ſuch
Summa bullarij in Pio 4. power, as doth perſonally belong to a Biſhop, either as he is Dioceſane, or as he is Ordinary, *in puris ſpiritualibus*. Neither doe I finde, that ever any Vicar did uſurpe or deſire any ſuch power, but onely Cardinall *Wolſey*, who deſired *Clement* the ſeaventh, *à ſarlo ſuo vicario univerſale in Francia, in Inghilterra, & in Germania, mentre ſtava*
Guicciardin. hiſt. lib. 18. *in prigione*, to make him his Vicar-generall in *France*, *England*, and *Germany*, during his impriſonment; which he could not doe by law, being his Ordinary and ſuſpended, if not *ab officio*, yet *à beneficio*: and if it had beene lawfull, yet the Pope had betrayed his weakeneſſe much to grant it, with that condition, during the time of his impriſonment: for the Cardinall who was then mediating his liberty, would without doubt have endeavoured to keepe him there ſtill, to continue his Vicarſhip. And
Thuan. hiſt. l. 1. moreover I finde, that by the Canon law, *ſede vacante*, the Deane and Chapter is ſucceſſour, or rather adminiſtratour to the Biſhops in their juriſdiction, and guardian of the ſpiritualties: yea, and in ſome caſes, *Capitulum*
C. licet Magiſter ent. de ſuppl. negl. *ſupplet negligentiam Epiſcopi in collatione beneficiorum*. And no marvell, for they are called *fratres Epiſcopi, ut Cardi-*
Lelius Zecchius de prarog. capitul. §. 13. *nales Papæ*: they can diſpenſe *in cauſis Epiſcopo reſervatis, & convocare capitula ad quæ Epiſcopi Vicarius non admittatur: & poſſunt condere & revocare ſtatuta*. And during the life of the Biſhop, the Arch-deacon is *Vicario jure* (as *Zerola*;) *vicarius natus*, (as *Hoſtienſis*) which they
Zerola in prax. Epiſc. verb. Archid. underſtand in reſpect of juriſdiction *in ſpiritualibus*; for not they, but the *Archipresbyter* is Vicar *in divinis*, which is, *in ſpiritualibus*, in relation to the power of *Order*: So that you ſee, they take not any ſuch ordinary power upon them, but leave it to the Biſhops, and their
Formula viſitationis Colonenſis. moſt naturall and lawfull Vicars in that power: and yet they bee their Vicars in *Pontificalibus* (as the Canoniſts expreſſe

expresse it) which is, in those causes that belong to their Sees, as they have peculiar and prerogative Courts, and such may bee Lay-men according to the most moderate moderne Decretists: *Syndicos* (saith *Duarenus*) *sive defensores, & apocrisiarios sive responsales laicos posse esse*, though by the old Canon law *Vicarius Episcopi debet esse Clericus*. And it is counted one of the insolent rare actions of the Popes, *causas Ecclesiasticas Laicis delegare*. This jurisdiction they may have without any trenching upon the office of a Bishop in his personall jurisdiction, which I conceive cannot bee delegated to a Lay person; being that jurisdiction, whereby hee doth exercise and execute his corrective, coercitive, coactive power, which is the instrument of his pastorall paternall care over his Clergie, and proceeds from the power of consecrated order, and is inseperably united to it: which power, I finde fully, yet briefly expressed by St *Cyprian*, speaking of a contumacious Deacon to his Bishop: he adviseth the Bishop, *Vigore Episcopalis cathedræ aut deponas eum aut abstineas*, either to degrade or suspend him: neither of these will a Lay delegate doe; yet I grant he may suspend, though not *ab officio*, yet *à beneficio*. And for their visitations, which are an act of ordinary jurisdiction, they performe them not *ex officio*, but by a speciall commission. And for the forme and force of their inquisition in them, it is not generall concerning the doctrine and manners of the Clergy, but directed and restrained according to the Bishops Articles; and without requiring an oath of the party presented; *visitatores interrogabant absque exactione juramenti*. And *Linwood* also insinuates as much: *Officialis & Principalis habet potestatem cognitionis, non inquisitionis, nec correctionis*. Yet I doe not disapprove that an oath should be required upon a fame, because it respects as much the purgation, as the conviction of the jurant.

Duarenus de officiis Eccles. lib. 1. cap. 19.

Durand. de orig. Iurisdic. Eccles. Con. 2.

Cypr. Epist. Rogat. Episc.

Suspensus à beneficio aut à pontificalibus non incurrit in irregularitatem si officiũ executus est, nam suspensio à beneficio non extendit ad ordinem.

Lelius Zecchius de causis Episc. reservatis de suspens. num. 14.

Formula visit. Diœcesis Coloniensis.

Lynwood de sequest. verb. vicarios generales.

And for the sentence of excommunication, which some make the processe of spirituall Courts, in point of contumacy: I am not able, I confesse, fully to satisfie in that point. I am sure it is farre more effectuall than a suspension, though *ab officio*; and it cannot be a personall interdict, because there is no expresse caution of relaxation: nor a bare prohibition, (which the Canonists call a *cessatio à Divinis*,) because that is not an Ecclesiasticall censure in Consistory, but is good out of Court: But bee it what it is, I dare subscribe to that judicious Bishop *Bilson* saith of it, to cleare it; who, I am sure, could and would say as much in the behalfe of Ecclesiasticall Officers, as any Bishop of his time, who speaking of the power of Excommunication, saith, *Nequaquam sibi clavium potestatem assumunt, sed pœnam ob contumaciam infligunt, quâ omnes illa animadversiones continentur, quæ legibus in eos sancita sunt, qui claves Ecclesiæ temerè contemnunt, quicunque nomine appelletur, sive suspensio, sive condemnatio, aut excommunicatio nil refert, dummodo ne potestatem hanc divino, sed humano jure sibi vendicent, nil causæ tunc est, quin Judices civiles delinquentem in pœnam Canonis incidisse declarent.* Which opinion of this learned Prelate, carryed along with the Praxis of the present Canonists, gives full satisfaction: for they distinguish the sentence of Excommunicaton to proceed *vel à jure, vel ab homine; à jure ob culpam non nisi mortalem fertur, ab homine potest ferri ob solam contumaciam, & sententia juris durat mortuo latente: sed sententia quæ ab homine fertur statim cessat eo mortuo vel amoto.* But the maine ground of these and such like exceptions, is, because Civilians are not in orders with us, as most Canonists bee beyond the Seas, though they have no title, and are but *Presbyteri Utopiani*, (as *Duarenus* cals such) when as with us not Ecclesiasticall Officers alone, but the Assessors also of our high Court of Conscience (which be

Lelius Zecchius de causis Episc. reservat. de interdic. Num. 30.

De perpetua guber. Eccles. cap 14.

Lelius Zecchius de casib. Episc. reservat. casu 1. Num. 2.

be or should be spirituall persons and Civilians) are not onely qualified to hold a benefice with care of soules, but also dispensed with to be *non-resident*; as the Master of the Rolls, the Deane of the Arches, the twelve Masters of the Chancerie, the twelve Advocates of the Arches, and all Chancellours, and Officials. If then our Ecclesiasticall officers were all in orders, as some of them are, then they could not with any reason except against them for Laymen, no more than they can against the Pontificiall Canonists, who have farre more Ecclesiasticall power, and especially the Moderne Legists, and are as able to judge of heresie, as the Duke of *Bavaria* in the time of Pope *Zachary*, who condemned *Virgilius* Bishop of *Saltzburge* of heresie, because he affirmed, that there were *Antipodes*; when as *Isidorus Hispalensis* was not so much as publikely questioned for holding hell to be at the *Antipodes* neare three hundred yeares before. Yet these are the onely men that are now Judges of heresie, which makes modest *Melchior Canus* complaine, *Non video quonam consilio in cognitione hæreseos, partes postremæ, ne dicam nullæ theologis permittantur: jurisconsultis verò vel primæ, vel etiam omnes*. When as with us, not our Chancellours, nor Commissaries, nor our Bishops alone may determine of heresie: & yet I beleeve any of them have as infallible assurance of truth, as immediate vocation, commission, assistance by by inspiration, as all they; but onely they are in orders, and all ours are not. As the twelve Auditors of the overruling Court of the *Rota* are the Popes Chaplaines by their office, (as *Lelius Zecchius de auditoribus Rotæ*) and so are those irrefragable Referendaries: and the Popes finde great good in having them in orders: for you shall not finde, but the Canonists have alwaies stood for the Popes prerogative; but onely *in Concilio Pisano* (*Guicciardine* saith) they that were for the Councell which was called against *Julius secundus*, by some of *Lewis* the twelfthes

See the last proviso to the Statute *Non resid.*

Aventin. Annal. l. 3.

Thom. Aquinas suppl. qu. 95. Art. 9.

Melchior Canus l. 8. c. 7.

1. Eliz. 1.

Lel. Zec. de rep. Eccles. cap. 11.

twelfthes faction, *Che de canonisti autorita del convocare i Concilii, nelle risedere solamente, persona del Pontifice.* i.e. The Canonists were of opinion that the authoritie to call a Councell was not onely in the Pope. But it was not so much the Canonists, as one principall one, which was *Philippus Decius* of *Millaine*, where the Councell began, who defended the cause, (as appeares out of *Carolus Molinæus* his Annotations upon *Decius* counsels,) so that the Popes knew what they did when they shewed and granted so many favours and priviledges to the Universitie of *Bononia*; as *Gregory* the ninth dedicates his Decretals to *Bononia*, so *Boneface* the eight his Sext, and *John* the two and twentieth his Clementines, and Extravagants. Thus they are formally qualified by orders; and because our Ecclesiasticall officers are not all so, some take and make these exceptions: so that I will conclude this briefe Digression, with this wish, not altogether void of hope: I would more of our learned Civilians were Divines, or more of our judicious Divines Civilians, *Quum Theologia & Jus Canonicum fraternizent.*

Guicc. hist. l. 9.

Car. Mol. Annot. in Decii Consil. 37.

Brissonius de antiq. juris Civilis l. 4. de jur. Divino & humano.

Alb. Parnorm. in C. super specula. Extr. ne Cler. vel Monach. n. 7.

THE

THE SECOND CONCLVSION.

That under the dominion and protection of this Civill State, this State Eccleſiaſticall is moſt likely to enjoy all thoſe rights that can any way belong unto it.

THough they that ſit at the tops and ſtearns of States, amongſt all their great and grave cares, doe little regard the opinion or cenſure of private men, ſince they are not bound to give a reaſon of their Lawes, nor an account of their actions, their adminiſtration being abſolute. Yet if by theſe Lawes, private perſons deſerve and ſuffer publick puniſhment, not only for offering private wrongs, but alſo for with-holding particular rights: ſurely theſe Law-makers, and adminiſtrators of juſtice, that will not ſuffer injuries unpuniſhed, will be ſo farre from doing wrong, though it be but to poore and private men, that they will feare, though they cannot flie the ſuſpition of it, and be as carefull to obſerve a juſt and Geometricall proportion in the diſtribution of dues and duties. Now if private and common ſubjects are not onely ſecure from injuries, but alſo ac-

cording to due desert publickly regarded, and rewarded for their particular service to the Common-wealth, though their aime be but at their owne personall and private profit; one may safely conjecture, that the publick & politick parts and pillars, the distinct and setled societies of that State shall be as strongly secured from detriment by wrongs, and as freely and fully favoured by advancement in rights. Yea it may be fully presumed, where a State is so framed, that they are all united in one head, without dependance and subordination to each other. As in a Monarchie, where with an equall impartiall proportiō the supreme head gives protection, & distributes rewards; when as if their union and communion be continued by a collaterall relation, & mutualitie of members, their equalitie of power and desert, would breed emulation, if not envie and indignation, and make them ingratefull to each other, if they be not injurious. As it is where the government is Aristocraticall; which may be seene in the envious ostracismes of the *Athenian*, *Ephesian*, *Venetian* States: *Thucydides historicus in exilium pulsus erat, quæ fortuna optimo cuique Optimatum Athenis accidere solet*: (as *Paulus Iovius* saith of the *Venetian* Common-wealth,) *Neminem temerè ex Optimatibus qui vel insigni virtute, vel spiritu in gerendis rebus, cæteris antecellat, potentem & clarum fieri patiuntur*. So that it is but a perverse & peevish paradox in *Machiavell*, to hold, that a Princely Monarch uses to be more ungratefull, than free and popular States, when as they either returne malice and mischiefe in reward of singular merits: or if suspicion which hee makes one ground of ingratitude, do not make them, at least to suspend them by a relegation; yet avarice, which is his other ground, will make them really ingratefull, though formally they pretend a reward. For if they gave any thing, it will not be worth the taking, *in statu populari & liberis civitatibus, præmia liberalitatis plus habent honoris*

ζῆλος καὶ φθόνος περὶ τοὺς ὁμοίους. *Arist. lib. 2. c. 12.*

Cic. de Orat. l. 2.

Iovius hist. l. 4. Machiavel. discor. l. 1. c. 29.

quàm

quàm utilitatis; they beſtow nothing but vaine, vaniſhing, empty, and aërie titles, which are blowne up, blowne out, and blowne away with the breath and voyce of the vulgar that gave them, ſo that they doe him that is gratified no right and regall good: οὐ χάριν φαῦλα δοῦναι, ὠδεὶς γὰρ ὁμολογεῖ δεῖσθαι φαύλων: it is not gratifying to give things that are contemptible, for no man will confeſſe that he hath neede of them: yea theſe toyiſh titles doe men more harme than their ingratitude could. For titles without proportionable eſtates, do not only fall under the miſerable ſuccour of other mens pittie, but are alſo a temptation to provoke all men to contemne them. And one maine reaſon of this difference in rewarding is, that Ariſtocracies reſpect themſelves in it, when as a Monarch to whom all give due and loyall reſpects, doth powerfully protect and royally reward with reſpect to all. But when and where Monarchies are diſtinguiſhed into ſocieties, as in ſome Kingdomes there are five States, as in *Denmarke*; in *France*, and in *Brittaine* three, which are ſubordinate and inferiour one to another, then and there the ſupreame Governour doth regard and reſpect them with different degrees of favour and care, with conſideration of what conſequence they are to him, and ſo proportions penſions; and of what need they ſtand of him, and ſo affoords protection, ſearching into the ſeverall circumſtances of their imployments and abilities, as of what uſe they are in point of neceſſitie, utilitie, and honour. Now all theſe three States are neceſſary, profitable, and for honour of the Prince, but not equally at any time, nor conſtantly at all times; neither in reſpect of peace or warre, domeſtick or forraine: ſo that as one State doth make it ſelfe more neceſſary in relation to an extraordinary time of neede, ſo another may be more profitable in the continuall ſupplying of ordinary expences: and the third may bee more for the honour of a King, both in ordinary and extraordi-

Bodinus de republ. lib. 5. c. 4.

Ariſt. Rhet. lib. 2. cap. 9.

Theſaurus pol. Apoteleſma 50.

nary actions. Now a King that preferres his honour before his profit, at all times will more reſpect that State which ſtands ſtrongeſt for his honour at all times, than that which is more profitable at all times; ſo will hee more eſteeme that which certainly ſupplies his ordinary continuall charges, than that which may be more neceſſary, *ſi cœlum ruat*, upon an extraordinary unlooked-for occaſion: becauſe wiſedome is not imployed in preventing, and providing againſt what may bee in poſſibility, but againſt what is likely in probabilitie: ſo that as in the naturall body, though there bee more continuall intercourſe and mutation of needfull ſupplies reciprocally betwixt the head and the heart, eſpecially from the heart: yet thoſe externall members that are neareſt united to the head, have more externall honour, as the eyes, the eares: ſo in the body politique, there is a conſtant interchange of ſuccours and ſupplies betweene the State Civill and Eccleſiaſticall; yet the State of the Nobility, eſpecially taken for the Counſell, is of higheſt aſſiſtance, which are as it were the eyes and eares of the King in publique providence and intelligence, (as *Dion Chryſoſtomus*) Πέρσαι ἕνα τινὰ ἔχειν ὀφθαλμὸν βασιλέως λεγόμενον. i. e. the *Perſians* had one that was called the eye of the Emperour, (as *Apuleius* out of *Ariſtotle*, expreſſing the State of the *Perſian* Court) *inter eos Aures Regia, & Imperatoris Oculi, quidam homines vocabantur.*

His Majeſties inſtructions to the Biſhops. 1626.

περὶ Βασιλείας. Zetzes Hiſtor. Chiliad. 1.

Theſe Principall Peeres that are ſo cloſely united to the head, that they communicate with it in the moſt ſecret and ſerious adviſings, deſervedly enjoy the faireſt fortunes and favours; for it is good reaſon that Kings ſhould heape and beſtow upon the watch-towers of the State the greateſt and higheſt honours in the State: that as they are neareſt, ſo they may be deareſt, being his right truſty and welbeloved Counſellours. Eſpecially ſeeing their imployment is no more immediately eminent than the

the truſt of it is troubleſome and dangerous.

And the next State in high eſtimation with Chriſtian Potentates, and with many the moſt eſteemed in all reſpects is their Clergie, the State Eccleſiaſticall; upon which they have heaped favours to the very exhauſting of their treaſures. *Imperium amore religionis ſemetipſum exhauſiſſe, &c.* I am not able to reach the reaſon in point of State, of that extraordinary extravagant large liberalitie: but thus much I am able to compaſſe and conceive, and ſhall endeavour to make it plaine. That whatſoever right and reaſon any King in *Europe* hath had for this 400 yeares to uphold his Clergie, and conferre favours and honours upon it; our preſent ſupreame head of our Civill State, hath all that right, and more reaſon to be as royally indulgent to our preſent State Eccleſiaſticall. *Tacitus Hiſtor. lib. 2.*

§. 2 As none can deny: but as he that hath chiefty of power over the whole body of the Common-wealth, may rightly and juſtly favour, beſtow rewards, priviledges and power upon any publique ſocietie, or private perſon in the ſame: ſo none will affirme that all that have ſupreame power have the ſame equalitie of right, to endow with priviledges, or inrich with rewards; becauſe that all doe grant that all Kings have not Dominion in the ſame equall altitude and latitude, and ſo cannot ſo highly advance in priviledges, leaſt they ſurmount their petty prerogative: nor ſo largely give them power and revenewes, leſt their extortion ſhorten their owne. And the grounds of this inequalitie are diverſe, in handling of which I will neither follow *Machiavell*, nor *Junius Brutus*; becauſe I finde them to runne into two extreames, the one granting it to all out of the looſneſſe of a wanton wit; the other denying it to all, being carried by the ſtream of innumerous particular authorities; & that becauſe, as the other wanted conſcience, ſo he wanted experience: or rather becauſe *Machiavell* lived when all the Princes in *Italy* claimed & uſurped

usurped equall and full power, and so writ what they did, not what they should do; and *Brutus* might endeavour to diminish the power of all, because he would not have the *French* King have so much, which hee might thinke too much for the present: if he considered it with the times before *Lewis* the eleventh, wherein as the Peeres and Parliaments had too much, so the Kings had too little: so that their difference of Dominion is not according to that fulnesse Princes can make it when they are once in possession of a Kingdome; nor according to that diminution wherewith disloyall Subjects impare it, when they threaten & raise a rebellion; but it is according to the severall meanes whereby they attaine or obtaine their Kingdome. Now all supreame Dominion in a Monarchie is attained by conquest or succession, or obtained by election. Kings that come to it by the right of conquest, may have as much power as they will take; they make their owne Charters, which might be some reason, as well as the *Roman* hatred of the name, as made *Scipio* refuse the title of a King, when the *Spaniards* would have given it him, lest he should be onely an Elective Prince; (as *Memnon*) Σκιπίων ὡς παρὰ τῶν ἰβήρων Βασιλεὺς ψηφισθεὶς, οὐκ ἐδέξατο: when as being a conquerer he could take what title he pleased, as in his Letters to the Senate of *Heraclea* he stiled himselfe, Σκιπίων στρατηγὸς κ' ἀνθύπατος ῥωμαίων, ἡρακλεωτῶν τῇ βουλῇ κ' τῷ δήμῳ χαίρειν: i. e. *Scipio* the Captaine and Consul of the *Romans*; which included a fullnesse of power both in relation to peace and warre: those that come to it by naturall succession, have as much power as their ancestours, accepting of such power as they finde; those that succeed by bequest, and are adopted heires (for adoption is good by last will and testament) have the same right that a naturall successour hath, if the adoption stand good. As the Kingdome of *France* was given to *Edward* the third by *Charles* the sixt: but those that are called to it onely by election, their power

Memnon hist. de Statu Heracle. lib. 12.

Cujacius observ. lib. 7. cap. 7.

Hottoman. illustr. quaest. 1.

power is restrained and curbed with cautionary conditions, and stands limited by them, though it may bee questioned who shall interpret them.

Now if these have great power in their supreme government, by any one of these rights to attaine a Kingdome; surely hee that hath it by all these rights conjoyned, hath more power than any hath that is intituled to it but by one, especially by election. But our present gracious Soveraigne hath it by lineall succession from an absolute Conquerour, which was confirmed to his father of pious memorie, by the Nuncupative will of his sacred predecessour, who then adopted him, and all was made sure unto him by the elective assent of the supreme Nobilitie, without any crosse-course conditions, (as falls out) when the souldiers or people elect. And as it is plaine that hee holds by all these, so I do conceive I could make it appeare, that most Kings in Christendome hold primarily and principally by one of these, and that of least power; but that I am loath to touch the tickliſh and tender titles of forraine Potentates; neither will I speake any thing of them as their States now stand, but onely in a word shew what anciently they were: for in my poore judgement their government may be as good and lawfull, if they have had the power and opportunitie to cast off and free themselves from these bridles and curbes of government: for not the most limited power, but the best rectified is safest both for Prince and people.

Brissonius de Regno Persico, lib. 1.

Anno 1. Iacobi. A just recognition of an undoubted succession.

§. 3 To shew then how it was with them heretofore, and to begin with the Empire after it was translated to the *Almaine*. Long hath that Empire continued by the election of the high Chamber of the *Septem-viri*, the seaven selected Electors of *Germany*; and some of the best Emperors have so well liked it, that they have not onely beene willing to take the promissarie oath containing divers

vers ſtrict conditions, but have alſo granted them new free Charters; and large prerogatives: as *Charles* the 4th in his *Bulla Aurea*, and ſo held ſo looſe and light a hand over them, that one of the Electors, the Biſhop of *Mentz*, in the Councell at *Franckford*, ſaid, the government was Ariſtocraticall, which might be well taken if hee meant it with reference to the Councell. The Kingdome of *France* ſeemes not to have beene anciently ſo abſolute and unreſtrained as now it is, for the twelve Peeres of *France, qui ſunt ut in Germania principes electores*, had not onely royall priviledges, and did not owe ſimple ſubjection, but reſpective homage; and had a regall authoritie in their ſeverall Provinces, and the command of the chiefe forces: but alſo had the power, if not to elect their King, (as *Nauclerus* ſaith, and it ſeemes true becauſe they have depoſed them;) yet to determine, when there is no great doubt who ſhall ſucceed: and their ſetling alwaies upon an heire male (which is the courſe of elective State) ſhewes it to be ſomewhat elective; for the reſtraining of it to the heire male did not primarily proceed from the *Salique* Law, becauſe many of their Kings have been *Lorraines*; which Dukes, (the *French* Civilians ſay) doe not obſerve, nor are under the *Salique* Law: but if it be not elective, it ſeemes not to be ſo cleare a ſucceſſion, becauſe it is a maſculine feud entailed upon the heire male. Yea the predominant extravagant power of the *Pariſian* Parliament ſeemes to intimate, that the ancient State was not ſo free and abſolute a Monarchie; for they called in the Kings edicts, ſent forth the contrary: and no appeale lay from their ſentence. *Contra illud tantum ſupplicare licet*, a petition of right only was permitted. So that this State which is moſt abſolute of all others, ſeemes to have beene anciently not ſo free & uncontrollable in its government, as a free ſucceſſive Monarchie ought to be. The next is the Kingdome of *Spaine*, which hath of old bin ſo diſquieted

Clapmarius de Arcanis Reipub. lib. 5. cap. 20.
Cominnaus lib. 10. Comment.
Grands di Francia la Brigliain mano.
Guicciardino hiſt. lib. 16.
Jeremy 38. 5.

Hottoman. apologia Catholica. §. 6.

Guymerus Comment. in prag. ſanct. tit. de authoritate Conciliorum.

ted with the continuall incurſions and invaſions of the *Moores* and *Saracens* from the South, and *Gothes* from the North, that it had ſcarce time to ſettle, as water toſſed by contrarie windes. But when it did pitch upon the forme of a Monarchie, it was elective, as appeares out of the Councell of *Tolledo*: *Si quis ad Regia Majeſtatis pervenire faſtigia ambit, abſque electione nobilitatis, Anathema ſit*: yea and in their latter daies their forme of inauguration, doth import and imply the ſame: for thus it runnes, *Nos qui valemos, tanto comme vos, y podemos mas que vos, vos elegemos Rey, con eſtas, y eſtas conditiones, intra vos y nos*: *i. e.* Wee that can do as much as you, and more, do elect you King, with theſe and theſe conditions, betwixt you & us. Yea and the *Juſtice* of *Aragon* hath had as much power as ever the Parliament of *Paris*; as is plaine, not onely in unlimited immunities, but alſo in the power they uſed againſt the Kings edicts: as may be ſeene in their writs, called, *los manifeſtados, y jure firmos*; from which power, though the Inquiſition began to free the Kings, when the *Caſtilians* moved the new King *Ferdinand* to antiquate their authoritie, and fully finiſhed it when *Philip* the ſecond repealed the *Aragon* priviledges, that hee might fruſtrate the project of his diſtaſted Secretary *Antonio Perez* who appealed from the King, *al Juyzio del juſticia de Aragon*: yet I do not conceive how that State ſhould be more free than before, becauſe it is under the power of a tyrannicall Inquiſition: for though that King for preſent reaſon of State gave them power too much to continue when thoſe reaſons ceaſed, yet they have much improved it, ſo that the Kings of *Spaine* might have done more providently in preventing their prevailing greatneſſe, if wee conſider their domeſtique freedome in government; though their advancement may advantage them to bring forraine States under their ſervitude: being a Councell of Conſcience that reflects upon the treatie

Concil. Tolet. 5. cap. 3.

Hieronymus de Blanca de Hiſp. regimine.

Idem ibidem. Thuan. hiſt. lib. 104.

Memorial. de Ant. Perez. la tercera parte.

concluded by the State with power to approve or annull them, and with dormant dispensations, which have reference to contingencies *in ordine ad Spiritualia*, to continue or dissolve all: & the Retraict is formed like waxe to take the impression of the present aspect and necessitie of affaires. But it was hard, (seeing that was their maine aime in pulling the *Justice* downe) to hinder them from at least so much power as they were able to take from the other: so that *Tullie* had no great reason to aske *Atticus*, in the like case (& that in Greeke as a secret, not to be understood of any that should intercept his letters) *Ad Atticum, lib. 9. epist. 4.* εὐλαβητέον ἢ καταλύοντα, μὴ ἀντὶς ἄρχοντα. i.e. whether is it not a good caveat to beware, lest he that ruines a Tyrant, do not raise himself on his ruines & in his roome: few doubt it, and this may be most unquestionable with *Spaine*, witnesse *Naples* & *Millaine*. These Inquisitors are like *Ephori* *Thucydides, l. 6.* in the *Spartane* Republique, whose Kings are observed to have the most restrained power: for the chiefe of these Inquisitors hath a great power over the King in his owne Court. *Inquisitor generalis, qui Aulam Regiam sequitur, Thesaurus Polit. Apotel. 63.* cum adjunctis consiliariis Ecclesiastici ordinis potestatem contra ipsum Regem usurpare potest: so that by all this it is plaine, that the *Spanish* Monarchie hath not long beene so free a Monarchie at home as a succeeding State uses to be. But that which makes most, to prove these States not absolute, is because an appeale will lye from any of them to the *Optimates* & Orders of their kingdomes, for *extrema provocatio* is one principle *inter summa jura imperii: In imperio tamen Germanico, (ut testantur pragmatici) ad sacram Clapmarius de Arcanis Reip. lib. 1. c. 19.* & supremam Cameram provocatur, apud Gallos ad octo Curias majores, apud Hispanos ad quatuor Curias: even as a generall Councell is above the Pope being elective. As for the other States of *European* Monarchies, without all question they are at this present elective, as *Poland* which made their King *Miscislaus* send *Lamparius* Bishop of *Cracovia*

via to Pope *Benedict* the ſeventh, *ut Regem ſe Polonorum & poſteros ſuos eſſe juberet, ſed ea res propter juſtas cauſas, ad aliquod tempus dilata fuit:* yea, it was never obtained, but it ſtill continues elective. *Moderata eſt principis Poloniæ poteſtas, quia non naturæ legibus in paternum regnum ſuccedit, ſed communibus ſuffragijs ſenatorij & equeſtris ordinis & publicâ exclamatione nobilitatis eligitur.* *Hungary* alſo is elective, although the *Spaniard* hath intayled it upon the match with the *Infanta*, which may eaſily bee cut off, and ſuffer a recovery into the former freedome. *In Hungaria liberam habent electionem, & inde ab ejus morte proceri Budæ conveniunt*: I might ſhew the like of *Denmarke*, but no more of that, I know not how this may be taken: but I hope well, becauſe in this I deliver onely what is licenced intelligence, even as *Honorius* and *Theodoſius* did interdict, *ne alicujus regni arcana ſcrutarentur*; but it was with this Proviſo: *Legatus tamen reverſus omnia narrare debet.*

Herbert. hiſtor. Polonia lib. 1.

Thuanus hiſt. lib. 56.

Cominæus lib. 10. Comment.

Guiccardine Hyppomneſes Polit. 106.

§. 4. Theſe inſtances are ſufficient to prove that our preſent Prince hath moſt unreſiſtible power, and ſo moſt unreſtrained right to favour, and freely beſtow immunities, priviledges, and revenues upon any ſingle ſociety, or ſingle perſons within his Dominions. Now the next thing to be proved is, that as he hath more right to ſhew favour to what State hee will; ſo hee hath more reaſon than they all to favour his Clergie moſt. But before I paſſe to that, it is worth obſervation by the way; that this government of our King is not more free in it ſelfe than it is freely and willingly ſuſtained; which ſhewes that it is the ancient, equall, and, as it were, the moſt naturall government of this Iland, and therefore the power is moſt right; becauſe naturalized by cuſtome; when as in other Kingdomes, yea in many pettie particular States, that little power they have improved by force, they keep and exerciſe by the ſame meanes. Hence it is that they

dare onely truſt forrainers to bee their guards: as the *French* have the *Scots*, and *Suitzers*; the Dukes of *Florence* the *Low Dutch*, which choice doth either proceed from tyranny in the Kings, or perfidiouſneſſe in the Nation, ὁ ἀεὶ βυλεύων τυραννίδι, αἰτεῖ τὴν φυλακήν: i.e. hee that affects tyrannie, deſireth a guard; as for inſtance, the firſt Dukes of *Florence* were eſteemed no leſſe, for it was libell-wiſe written over the doore of *Coſmus de Medicis* (the firſt Duke) where he was ſicke, and tooke phyſicke, *qui medicè vivit, miſerè vivit*, which they underſtood of the *Medicean* tyrannie, both in reſpect of his feares, and their wrongs in his oppreſſion: ſo the later *Greeke* Orientall Emperours had a guard of *Engliſh*, which was called φυλακὴ πελεκυφόρων ἀγγλίων, in which thoſe tyrants put as great confidence, as the *Turke* doth in his Chriſtian-borne Janizaries. And in this age there were ſome that would have brought an *Italian* guard into *France* and *Scotland*, but it was when they aſpired to uſurpe them both: *Guiſiani Italorum cuſtodias, quòd aſſuetis negotijs ſuis non ſatis fiderent, adhibent; ſui potiùs quàm regni, aut regis munimento:* when as our Kings have found out by long experience that to be true, which *Dyon Chryſoſtome* told *Trajane* the Emperour, τὸ ὡς ἔστιν ἄλλη φυλακὴ πλὴν ἀγαπᾶσθαι, ſo that they regard no guard, but the love of the Subject. But to returne: It is no ſmall encouragement to me, before I argue it in any point, and a ſtrong argument for me, that our Soveraigne hath and doth prove this which I affirme to bee true, in his moſt Royall and religious practice. For I doe not beleeve, that there hath beene any Emperour, Monarch, or Potentate ſince *Charles* the firſt and the great, that ever did ſo truly and conſtantly favour, and carefully protect a poore Clergie as hee hath done. But let us conſider what great reaſon of this favour there is: wherein I will not ſearch vainly into his Majeſties particular reaſons, for I ſhould not bee able to finde

Ariſt. Rhet. lib. 1. cap. 2.

Nicetas Coniates Annal. l. 2.

Thuanus hiſt. lib. 23.

Dion Chryſoſt. περὶ Βασιλείας γ.

finde them out, becauſe a Kings heart is not to bee ſounded and ſearched by a private head, that is not able to conceive the heigth of their ends: but I will diſcourſe of it as he is our King. If from a ſingle relation, there doe ariſe a ſingle reſpect, ſurely a double portion of reſpect will follow a double relation. Now this Ariſtocraticall Clergie have not onely relation to their Prince, as hee is a crowned King, and they his lawfull Subjects, but alſo as hee is the Lords annoynted, defender of the faith, according to his juſt title (as his Majeſtie pleaſes to ſpeake in his declaration before the Articles.) For they alſo are the Lords annoynted, delivering that faith; and the *Primate* of them, the immediate inſtrument of his conſecration; ſo that as by the crowning, they are by right his Subjects, ſo this annoynting of God, ſeperinduceth a brotherhood betwixt Kings and Biſhops (as Sir *Francis Bacon* in his Booke to King *James*.) And this relation is onely ancient in our Kings amongſt the Princes of Chriſtendome; for though, as our Soveraigne is crowned by the Archbiſhop of *Canterbury*, ſo the Emperours when they were Kings of *France*, began to bee annoynted and crowned by the Archbiſhops of *Mentz*, *Colen*, and *Trier*, as they were Emperours; and by the Archbiſhop of *Rhemes*, as they were Kings of *France*. Yet the Kings of *France* of the firſt line, at leaſt, were not annoynted (as one of the freeſt Hiſtorians confeſſes) *De la premiere Lignée oinct ny ſacre à Rhemes*: and ſo in another place the ſame Author is plaine and peremptory, *n' eſt faicte aucune mention de ſacre, ny de onctionez Roys, de la premiere lignée. Id. ibid.* i.e. there is no mention in our Antiquities, of the annoynting of the Kings of the firſt line. And though the Kings of *Spaine* are crowned by the Archbiſhop of *Toledo*, the Kings of *Denmarke* by the Archbiſhop of *Vpſale*, the Kings of *Polonia* by the Archbiſhop of *Gneſne*, the Kings of *Hungary* by the Archbiſhop of

Giraud du Haillan des affaires lib. 1.

Strigon, the Kings of *Navarre* by the Biſhop of *Pampelune*, yet none of them were anciently annoynted. Now it cannot bee denied, but as this reall relation doth more peculiar and appropriate the State Eccleſiaſtique to our King, ſo it makes him not onely the ſupreame head and governour, but alſo the chiefe guide and guardian: for by it he is more than a meere Lay-man; he is a mixt perſon, having ſupreame Eccleſiaſtique as well as Civill government, *Reges ſancto oleo uncti ſunt ſpiritualis juriſdictionis capaces.* Which ſentence was applyed to our King in the time of *Edward* the third: And *Guymer* in his Comment on the pragmaticall ſanction of *France*, is peremptorie, *quòd Reges inuncti non ſunt meri Laici*; and addes, *inde Reges Anglia conferunt beneficia.* So that by this is there ſome addition granted to the power of Princes over the Church. Though the old gloſſe upon the *Clementines* avouch, *quòd unctio nil addit ad poteſtatem Imperatoriam*: which the *Gregorian* edition of the Canon Law did well to diſlike, but they ſhould have done better, not to have given a worſe. And if it adde to their power over the Church, then as they have more right by it, ſo they have more reaſon for it to doe what good they pleaſe for the Clergie. So that, doe but conſider the qualitie and qualifications of our Kings perſon, to doe for his Clergie, and you will ſay, hee hath greateſt right and reaſon of any Prince. Conſider againe the reaſons on the part of the preſent State Eccleſiaſticall, and you ſhall finde, that they deſerve more of their Prince, than any Clergie theſe foure hundred yeares.

Viddeges ſancti Edwards.

33. *Edw. 3. tit. Aide le Roy.*

Guimerus tit. 12. §. 9.

Clement. unic. d. ſur. §. *porrò ver. Reges.*

§. 5. But I muſt preſuppoſe before that will be granted, that our *Monarch* of great *Brittaine* hath not any reaſon to give or beſtow meanes and revenues upon any forraine State Eccleſiaſticall. No Prince hath reaſon to beſtow his free favours upon any, over whom he hath (for the preſent) no right to rule, nor hath heretofore promi-

promised it, neither by himselfe or by his predecessours, and therefore bound himselfe to further & favour them. So that, though the *Roman* Clergie doth claime and clamour for revenues and priviledges from our King, yet as they have no right to claime them, so they have no reason to expect them: for they are so farre from being his deserving domestique subjects, that they are his deadly enemies, though they be imbred and homebred. They have not then any right; for neither our King, nor any of his lawfull predecessours, did ever binde themselves to any such performances. Later & better learned writers of the *Romish* faction, finding by the carefull and curious examination of sundrie passages in infinite Interpreters, how hard a thing it was, to prove their universall supremacie *in temporalibus*, by direct evidence out of Gods word, resolve to prove it by Charter, grant, and priviledge from Princes pieties, as *Augustinus Steucus* (*Librarian* to Pope *Paul* the third) sets downe the claime the Pope laid to all the Kingdomes in Christendome, grounding all upon the particular grants from the Kings, but especially on *Boniface* the eights letters of Demand. As for instance, from *Constantine* the first and the best, and *Phocas* the first and the worst, from the universall gifts of those universall Emperours, they ground a generall right in all kingdomes. The *Bononian* Canonists deale cunningly, and seeme to deale ingenuously, playing the sophisters more than the sycophants, in this point, discoursing of this donation of *Constantine*; for they lay it downe as a presupposed presumption in the Law: That there is such a true deed, notwithstanding there be no mention made of it in any part of the sincere Civill Law. *Sed quæ notabiliter fiunt, specialiter notanda sunt.* But they never question it *de facto*, but enquire *quo jure*, and, *an sit revocabile*; and since they do not fully affirme that hee gave it, I will not so much as shew the falsitie of it, but referre all to the most

moſt judicious and modeſtly moderate amongſt them. See what *Bartholus* ſaith of it, who was not a plaine dealer eſpecially in publique, and take his opinion as a taſte of the reſt, being a moderate man: *Videte* (ſaith he) *nos ſumus in terris Eccleſiæ viz. Bononiâ, & ideo dico quod illa Donatio Valuit*: hee would not ſay it was firme, becauſe he knew there was not an authentique inſtrument of it, aſſenting to that of the ſuppoſed *Doner Conſtantine*. *Scripturæ diverſæ ſibi invicem derogantes, nil firmitatis habere poſſunt*. But for *Phocas* his grant, a faithleſſe uſurping Tyrant, I leave it to be judged of, by thoſe that chuſe to meaſure claimes & titles, by the line of equitie, and not by the Laſt of ambition. Yet thus much I will inferre againſt it, that a Charter granted as this was, chiefly upon a ground of cunning, with a purpoſe to maintaine a plot, by partie, which was undertaken and begunne by fraud, might have beene after revoked by himſelfe, or anulled or repealed by his ſucceſſours. And further I ſay, that though this grant were authentique in all points, yet the Popes could have no right to this Kingdome by it, becauſe this Kingdome was excluded from the care, protection and providence of the Romane Empire, neere two hundred yeares before *Phocas*. For *Ælius* L. Lieutenant for *Valentinianus* in the parts of *France*, ſent word to the *Britaines*, that they were to looke for no more ayde from the Empire, which was falne into faction, ſcarce able to ſupport it ſelfe; being thus abandoned, all Lawes did free them from dutie and dependance. But to make theſe generall grants the ſtronger, they pretend particular grants from our owne Kings, as from *Ina* King of the Weſt *Saxons*, that was indeed religious, and from King *Iohn*, that was impious, as well *ſans foye*, as his title was *ſans terre* (as the King of *France*, *Philip* the ſecond ſaid) *Johannes nunquam fuit verus Rex*; neither of theſe binde our State; for the *Peter*-pence contributed to *Rome* by *Ina*,

Barthol. præfat. Digeſt. nu. 24.

L. Scriptura. 14. C. d fide inſtrum.

Covarr: pract. queſt. c. 1. nu. 9.

Decius Conſil. 130.

Polychron. li. 1. cap. 110.

Baronius Annal. 450.

Math. Weſt. 1216.

Ina, are called in the Lawes of *Canutus*, *Larga Regis benignitas*: and in the abstract (which is the best of the confessours and conquerours decrees) *Regis Eleemosyna*, which imports not due nor dutie, but charitie, and the Pope to be his beads-man, not the King to be his homager. There were many manifest nullities in King *Johns* grant, for hee had no right to hold the Kingdome, and if hee had held it by right, yet he could not grant any thing in prejudice to the whole State, without the consent *Regni universitatis*, (as *Mathew Paris* tearmeth the Parliament) and a third nullitie is in the forme of the grant, where, whatsoever is passed in the body of the Grant, is resumed by this *proviso* in the conclusion, *Salvis nobis & haeredibus nostris, Justitiis libertatibus & regalibus nostris*: which being luckily inserted salves all, and makes it absolutely void. But the maine Grant which *Baronius* relies upon, is a donation from *Ethelulphus* King of the West *Saxons* which seemes very lawfull, if it were (as he saith) *salubri consilio Episcoporum & Principum*, but yet that deed (though wee free it from being forged, and grant that by it a pettie King could passe all *England* to the Pope) was void, if you do but consider among many other things, the incompetencie and incapacitie of the person, to whom the deed was made. Now *Baronius* is peremptory, that it was made to the immediate successour of *Leo* the fourth, which according to all the truest writers of the Popes lives, was *Iohn* the eight, which they conclude was a woman, *fu una donna nata de Inghilterra che vacata là sede Apostolica, per la morte di Leon quarto, fu eletta per sommo Pontifice di Roma. i.e.* There was a woman by Nation of *England*, who (when the See Apostolique was vacant by the death of *Leo* the fourth) was elected to be Pope of *Rome* (as *Petro de Mexia*) and *Boccacio de las mugeres illustres*: the King might perhaps have done much for his country-woman, if he had conceived her so (as this

Math. West. ibidem.

Baron. Annal. Anno. 854.

Petro de Mexia della selva. c. 9.

Spaniſh author conceits, miſtaking her name for her Countrie) but ſhe was not capable to receive ſuch a deed to her uſe, and therefore, the *Juriſts* have reaſon to make this queſtion, *Vtrum acta Johannis octavi in papam rata eſſe debent*: And if what ſhe did was void, what done for her is not firme, being it was given, ſuppoſing ſhee was capable. So it is plaine, that this engine is not able to uphold this claime, being ſo looſe, and hanging together in the joynts like ſicke mens dreames, ſhewing their inconſiderate inconſtant humours, their proofes being as weake as their imagination is ſtrong, and ſtanding upon ſlender ſuppoſals, particular intereſt making partiall. But they have another ground for a preſumption of their right, becauſe ſome poore oppreſſed Princes haved eſired to hold their Kingdomes from them, as ſome uſurpers ſought to obtaine dominions by their gifts; who depoſe Kings, that they might diſpoſe of their Kingdomes. But this is nothing, and they ſtand not upon it, but when they have nothing elſe to ſay. I do not by this goe about to deny, that our Kings have been bountifull Benefactors to the *Roman* Clergie, but this onely I ſtand upon, that they have no reaſon to continue ſo ſtill, ſince they were never lawfully bound to it. Neither do I denie that any Prince ſhould conferre favours upon ſome forraine Eccleſiaſticall State with this caution, that he be not prejudiced by the kindnes, & may have good uſe of their thankfulneſſe: as ſuppoſe any Prince ſhould be called into *Germany* or *Italy*, or any other kingdom, by an oppreſſed State Eccleſiaſticall, that Prince may do royally to inveſt them into their former ſpirituall poſſeſſions, and yet never impoveriſh or inſlave his owne kingdome to them, and alſo binde them to his for protection. Thus did *Pipine*, *Charles* the great, *Ludovicus pius*, they releeved the *Roman* Clergie, and beſtowed very much upon them in large territories, but they gave them

Dies nunquam tranſit, quin aliquod pium fecerit, ſed ita ut Ærarium non everteret: (ut de Severo Lamprid. Inſtrumenti, à Volaterrano edita: lib. Greg. 3.

them nothing in *France*, but onely what they recovered from them in *Italy*. *Pipinus & Carolus Rom. Pontificibus profugium, res Pontificum, pronas in lapsum, ne ruerent saepius texerunt, aut majore studio erexerunt afflictos.* It is then evident, that our King hath no reason to bestow honour or power, revennes or priviledges, upon any forraine State Ecclesiasticall; and I shall endeavour to make it as plaine, that he hath the greatest reason of any Prince in Christendome to bestow them all upon his owne domestick Clergie. *Guicc. lib. 4. hist. Ital. Sabellic. exemp. lib. 3. cap. 9.*

§ 6. The Nobility and the Clergie are the prime pillars of a Monarchie, and the Communaltie is the ground whereon they stand. And this they well know that intend the ruine of it, for they will be sure to strike at these two props, knowing that then it will fall, and the ground and foundation remaine to them to erect a-new; (as *Ball* a Masse-Priest, Chaplain to *Wat Tyler*, adviseth his chieftane to destroy all the Clergy and Nobility; so *Garnet* did the Traytors in the Powder-plot, (as the Earle of *Northampton* well observeth:) and therefore *Philip* the second of *Spaine*, who was seldome in an errour about the upholding and inlarging a Monarchie, advises his sonne *Philip* the third, to stick fast to the Clergie, *los Clerigos amigo*, as I have beene; but yet so, as you disregard not the Nobility, otherwise they will hate you, and envy them, and ruine all. Now if the Kings of *Spaine* have reason so highly to favour their Clergie, as to feare, least their kindnesse to them, should kindle indignation in the Nobility; surely our Prince hath more reason so highly to succour his Clergie, as that it may not be the object of the contempt of the vulgar. For the Clergie of *Spaine* and all the *Romish* faction are not simply subject to them, but deny Civill obedience alwayes to their Prince, where Canonicall obedience commands the contrary, or priviledges above it; when as our Clergie, are as true Subjects as any State,

and renounce all obedience to any other Potentate. So that this hearty adherence to his Majeſtie, is one reaſon. Yea they beſtow all their labours in Gods ſervice, onely in his dominions; expect favour from none but his highneſſe: and they are more beneficiall to their King than any Clergie in Chriſtendome to their native Prince, or any State in this Kingdome to the Crowne. For though the revenues of other Clergies, as of *Spaine*, bee infinitely above ours, as one of their Hiſtorians: *Opes Eccleſiaſticorum penè æquales ſunt ſecularium unà cum Regijs.* Yet they are not ſo conſtantly beneficiall to the King, but to the Pope: and if the King get any good ſum or ſubſidie out of them, it is either *la cruzada*, or the tenths called *el excuſado*, granted to him by the Popes indulgence; or if hee cannot procure a Bull of facultie, hee muſt get all they give by ſtriving and force (as Cardinall *de Oſſat* in his letter to *Henry* the fourth of *France* ſpeakes of *Philip* the thirds ſacriledge.) *Rex Hiſpaniæ omnem argenteam ſupellectilem Eccleſiarum & Eccleſiaſticorum ſacrilegâ manu uſurpare tentat:* when as our Clergie, which have not the tyth of the tenth part of that meanes, is not onely now and then profitable in ſmall matters, but conſtantly beneficiall to the utmoſt of their ſmall uncertaine revenues. Now if *Francis* the firſt beleeved that for a great kindneſſe from Pope *Leo* the tenth, in their conference at the interview, to have the tenths of Eccleſiaſticall livings in *France* for one yeare; (as *Guicciardine* in a judicious fleighting of the favour: *Promiſſe il Pontifice, al redargli facultà, di riſcuotere, per vn anno la decima delle cheiſe, del Reame, de Francia*) that is, the Pope promiſed to grant him a Bull of facultie to levie the tenth, of the Church of *France* for one yeare: that the King tooke the propoſall into conſideration, and communicated it to his Counſell; who thought it a great benefit if he might have them, *non ſecundùm antiquum valorem beneficiorum*, but as they are improved;

Nicolaum Oliveira de reditu Eccleſiaſtico Hiſpaniæ.

Oſſatus epiſt. 274.

Guicc. hiſt. l. 12.

Concordata Gallia tit. de Annatis.

improved; Surely a farre greater benefit it is to have the tenth every yeare, Subsidies most yeares, and first fruits the first yeare, and that not according to the present value which is much fallen from the ancient revenues, but according to the Popes bookes, in most, when as Ecclesiasticall preferments are abated halfe in halfe. For as all other States are more charged, so their revenues are improved accordingly; but the meanes of the Clergie is much impaired, and yet their charges are increased in many things; in all things keepe the old rate; so that notwithstanding the poverty (as Sir *Nicholas Bacon*, wee have no reason to exact or expect any subsidie from the spiritualtie, who are so exhausted) yet it is constantly the most beneficiall State of this Realme to the Crowne, both in ordinary and extraordinary revenues, *cæteris paribus*. In these considerations amongst many, wee see they deserve much, and there is one thing that makes it more safe for our King to bestow greater honour and priviledges upon them, than any other Prince; which is, because hee hath not the reason to suspect them of ambitious aspiring to a Monarchie, since they have cast off their Church Monarchie; as the *Romans* never suspected any of a tyrannicall usurpation, after they had by one consent cast out the Kings: so that though the Pope seemed to favour this Clergie heretofore upon good reason, yet our King hath as much, and this reason more than the Pope hath, for he hath not onely all the power of jurisdiction the Pope had over them, but the revenues also the Pope had from them: and yet is without feare and danger of being rebelled against by them, or disthroned. But in one thing it is more capable of a royall Potentates bounty and protection, then any forraine Clergie is, in respect of its owne supreame head, or any State in our owne Kingdome, in relation to our King; and that is, that it is so poore and obvious to injuries, that it

Che l' honor gran cosa haverlo, piu gran cosa è il meritarlo.
Vt Anton. de Guevara Carolo quint. ep. l. 1.

1. Eliz. 1. Guymer comment. in prag. sanct. Gallia. tit. de Author. Gener. Concil. verb. dejectum.

will make the ordinary bounty of a Prince seeme magnificent, and cause his power to long and delight to protect such an innocent State, being neither able to resist, nor strong to endure and suffer wrongs; and such sheltering securitie is the proper worke of absolute justice, whereby it exercises expresses and approves its transcendencie, *namut justus sis non sufficit quòd innocens sis; sed ut innocentes etiam ab injuriis serves.* Thus from the power of Dominion, passeth the influence of protection.

Tho. Aquinas Commentar. in Boethium lib. 1.

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THE

THE THIRD CONCLVSION.

That all the rights and reſpects that the State Eccleſiaſticall enjoyes or deſires are originally derived from their relation and dependance on the Civill.

HE that hath publique power and opportunitie to doe a great good-turne for endearing a private friend that depends upon him, will have much adoe to forbeare to do it, though the weale-publique ſuffer ſome detriment by it. Yet if his friend do ſo much tender the publique good, that he will not deſire any thing to the prejudice of it, ſurely then the publique perſon out of his engagements and reſpects to the publique good, will leave off his preſent purpoſe and pleaſure his favorite in ſome things that may doe him good, and the Common-wealth no harme. Even ſo our ſupreme Regent of great *Brittaine*, hath great and tranſcendent power, and never wants an opportunitie to doe good and beſtow favours upon the well deſerving State of the Clergie; and it were impoſſible for him to hold his royall bountifull hand, if this Clergie ſhould not in all its petitions

petitions consider the publique good, apprehending it selfe as a member of the Civill State. And hence it is, that though the King have more power than I beleeve was ever tried or can be defined, to doe his Clergie good, yet they have not any thing conferred upon them which is not according to the Lawes, Customes, and Liberties of this Common-wealth. All that the State Ecclesiasticall enjoyes, belongs to it as to a principall member of the body politique; and is derived to it from the supreme Civill head on which it doth depend, and in whom it is united to the Civill State. It is no debasing or derogation to a spiritualitie, to be thus subject to the Dominion of a sacred Soveraigne; for though servitude, according to the Civilians, proceed not from the Law of nature, but of Nations, or at least from nature corrupted, (as the Schooles) yet orderly subjection and superioritie, proceed from the instinct of pure nature :. for in Heaven there is order amongst the blessed Angels, and in the state of innocencie there was superioritie, not only betwixt man and all other creatures, but also betwixt man and woman; and had they lived in Paradise till there had beene father and son, there should have beene *Patria potestas*, or else the fifth Commandament is not morall: and when there had beene many families, there must necessarily have beene *Regia potestas*, or else the best and most happie life must have beene without the greatest happinesse of life, which is order. No disparagement I say, especially seeing the superioritie of our Prince over his Clergie is not enslaving tyrannie, but a sweete and a lawfull Soverainetie; which government as it is his due, so it is our dutie to obey it; for government and obedience are relatives of equall extent. And as it is no disparagement to the State Ecclesiasticall to be subject to our supreme Magistrate, so it is great benefit to the Clergie, and a satisfaction to the Laitie; that all the rights and respects that they

Non dominationem & servos, sed Rectorem & civis cogitet. Tacit. Annal. l. 12.

enjoy

enjoy or desire, are derived from that Prince whom both so willingly obey.

§. 2 All that the State Ecclesiasticall doth enjoy or claime, may be reduced to these two heads; of power, and of honour: and they derive these from one sole supreme governour, who is fully qualified by his personall eminent authoritie, to transferre and conferre these rights and respects to them, and upon them: for as these two the power and honour of the Clergie are inseparably derived from the supreme Soveraigne, then in being, and not communicable to any other State: so the particular powers and regalities by which they are more specially conveyed, are inseparably and incommunicably appropriated to his royall person. As for instance, the power of the State of the Clergie is originally derived from his Ecclesiasticall supremacie, the honours from his Lawes and royall prerogative. All Kings I confesse have not Ecclesiasticall government, and that because many give up their right; some know it not; as many of our Kings for many yeares were bereaved of it, in whole or in some principall parts, by giving and granting to the Pope an inch in breadth with them, and hee taking an ell in height above them. But when the first defender of the faith *Henry* the eight waxed wearie of the weight of that intolerable usurpation, especially when hee perceived that the Popes ambition soared upon the wings and winde of the spirituall supremacie, to a temporall superioritie; Then the King, like *Iulius Cæsar*, that he might fully recover into his power the temporalitie, *potestatem Pontificiam, cum Cæsaria potentia conjunxit*: hee resumed the Ecclesiasticall power, finding that it was impossible in the course of the moderne policie of the Popes, to be supreme agent in temporall affaires, while they were the highest in spirituall government; especially since these powers cannot rest really divided in a Monarchie, though they be really

Iacob. Cujacii in d. l. 2. d. origine Civili. § 9.

distinct in a Monarch being a mixt person. So that the statutes in the *vicesimo quinto* of *Henry* the eight, and *primo* of *Elizabeth*, which determinately set downe this power of supremacie, are not Lawes inductory of a new, but declaratorie of the ancient authoritie of our Prince, vvith the solemne signification of their re-assumpeion. And our sacred Soveraigne doth not alone take this power for his right, but many other Potentates in Christendome, that have not so much reason. As the Kings of *France*, *Spaine*, *Denmarke*, *Poland*, *Hungarie*, and *Sicily*: which three last States have more nearer dependance upon the Pope than any in *Europe*; for *Sicilie* hath beene held of him as a spirituall feud, and *Poland* and *Hungarie* were both in one Popes daies, *Benedict* the seventh, converted from *Paganisme*; and therefore one would thinke, & so it seems, wholly at the Popes disposall, especially in spirituall affaires. Yet in *Sicilie* the Kings of *Spaine* do not onely claime supremacie of over-seeing, but also superintendencie in doing, in Ecclesiasticall employments. And the Kings of *Poland*, whose power is moderated by the limits and conditions of an election, *Archiepiscopos, Episcopos, cœnobiarchas dicunt. suóque arbitrio eligunt*: and the K. of *Hungarie* doe use the same power, and with as much reason (in a Canonists opinion) as we do, for though they cannot *de jure*, yet, *Reges Angliæ & Hungariæ conferunt beneficia ex privilegio Papæ*. The Kings of *France* have alwaies beene at defiance with the Popes for this power, renewing continually *pragmaticall sanctions* in defence of it, especially in the time of *Charles* the seventh, therefore called *Carolina sanctio*: which was of that force by vertue of that approbation of the free Councell of *Basile*, that it curbed and easheered the Popes power, causing them to impeach it by appealing from it almost in all causes; which *Pius* the second perceiving, sollicited *Lewis* the eleventh the sonne of *Charles*, to abolish and repeale that

Thesaurus Pol. Apotelesf. 50.
Guicciardino hist. l. 4.
Herbert. histor. Polonial. 2. c. 7.
Baron. Anaal. Anno 1209.
Thuanus hist. l. 56.
Guymer. Comment. prag. sanct. de Annatu.
Duarenus pro libertate Eccles. Gallicana. §. 4.
Æneas Sylvius epist. 387.

that ſanction, being enacted in a ſeditious ſchiſmaticall conventicle, which he well approved for a generall Councell while he was a private *Æneas Sylvius*, Secretarie to the Emperour *Fredericke* the third, Clarke of the Ceremonies, and Apoſtolique Notarie in that Councell. The King for the preſent called it in, but his wiſedome found the miſchiefe, and rewarded Cardinall *Balue* very well for urging him to it as the Popes Legat, *Rex Cardinalem Balvam in carcerem detruſit ob detrimentum conſilio ſuo emergens*; and with ſuch diſpleaſure, that *Philip de Comynes* ſaith, *Cardinalis Balvenſis carcerem horrendum excogitavit in quem inclusus primum erat & quatuordecim annos detentus, non obſtante Pontifice Romano.* The Kings of *France* were ever after ſtout in the defence of that *Sanction*, till *Francis* the firſt in his interview with *Leo* the tenth, did remit the force of it in the *Concordata Gallia*; which made his ſerious Secretarie *Budæus* ſay, *Palladium Gallia proditum eſſe.* The Kings of *Spaine* in *Caſtile* have ſome limited ſpirituall power, by a late priviledge of *Adrian* the ſixth, granted to *Charles* the fifth; but when they ſee their time, they take ſo much as ſhall ſerve their turne: as *Philip* the ſecond ſeized upon the temporalls of the Archbiſhop of *Toledo*, the Grand Chancellour of *Caſtile ex officio.* When the Biſhop of *Caranza* was apprehended at *Rome* for new hereſie, and when *Sixtus Quintus* ſent to him to undertake a warre againſt *England*, and told him that he would remit to him all the revenues that aroſe of that Biſhopricke, *ſede vacante; ſed prudentiſſimus princeps reſpondet ſe nil de ſuo Pontifici largiri.* And though at home this power is but what he pleaſes to take, yet in other of his territories it is lawfully as large as another Prince; as in *Burgundy* and *Belgia* he hath the ſame right the King of *France* once had: as *Charles* the fifth made a ſtatute of *Mortmaine*. *Nullis perſonis Eccleſiaſticis, vel locis ſacris licet ullam rem immobilem, abſque principis licentia*

Concordat. Gallia Leonina Conſtit.

Æneas Sylvius Bulla Retractat.

Proteſtatio Regis adverſ. Concil. Trident. apud Thuan. hiſtor. lib. 8. Philip. de Com. lib. 9. Concilio Piſano. Guicciardine hiſt. lib. 12.

Budæus de aſſe. lib. 5. Marinæus Siculus de reb. Hiſp.

Thuanus hiſt. lib. 72.

Theſaurus Pol. lit. Apoſtol. 49.

censia acceptare, vel habere. And *Philip* the second his sonne publishing the Councell of *Trent* in the Low-Countries, did not let it passe in all points with the full strength of an Ecclesiasticall law, but restrained it with an expresse clause of speciall provision, that it should in no wise prejudice or diminish any priviledge the King enjoyed touching possessary judgements, or Ecclesiasticall livings, or concerning nomination thereunto: and surely the Kings of *Spaine* have the like prerogative in *Portugall*, because the Counsell of the State in that Kingdome had the right of presentation to all the Archbishopricks, Bishopricks, and Abbies: and King *Philip* the 2d being urged to make good his succession to that Kingdome by the sword, might assume to himselfe what prerogative hee pleased, for conquerours make their owne Charters: so that I cannot but conceive that hee in his wisedome for reasons of State in which he was most exquisite, did take into his hands not onely all that Ecclesiasticall power that the Counsell of State exercised, but also what did of right belong unto the Kings of *Portugall*. I will not now enquire whether our Prince hath such a supreame power, *jure positivo Pontificio*; I am sure it is *jure divino Apostolico*: and supposing such a power, I will for more distinct proceeding, consider the severall streames and strings of this Ecclesiasticall power; and how they flow and are fastened to the head and top of Soveraigntie, paralleling them with the severall parts and points of this honour, discovering how they are annexed to these powers, and how they arise, are raised and stand by his Majesties lawes and Regall prerogative.

Hugo Linscotan de Regno Portugallie.

Boter. Hersic. quæst. lib. 1.

§ 3. All power Ecclesiasticall is either power of *Order*, or of *Jurisdiction*, and both these depend upon the power of supremacie. For though these powers of order and jurisdiction be immediately derived from Christ the mysticall head of the Church, in respect of their institution, com-

Durandus de origine jurisdict. Ecclesiast. Conclus. 2.

commission, internall qualification, and deputation of persons to performe them; yet they are mediately derived from our Prince, the ministeriall head of our particular Church, in relation to their execution in the Church of *England*. For the power of *Order* cannot bee lawfully exercised in these dominions, without the licence or permission from the power of *Jurisdiction*; which power is originally derived from the Kings dominion over Ecclesiasticall causes and persons. So that it is plaine in generall, that they are dependant on his Crowne and supremacie. To omit the jurisdiction *in foro conscientiæ*, that depends upon the power of *Order*, I will for a more particular view of this dependent derivation, consider the severall proper acts and workes of this Ecclesiasticall supremacie, which (as I conceive) may be reduced to these foure. The first worke is reformation of the Church in Doctrine, manners, and ceremonies. The second convocations of Councels and Synods, for the reformation. The third is promulgations of the lawes and edicts, proceeding either from his Highnesse pleasure in publicke declarations, upon advise with his Bishops, or the Canons or constitutions decreed or confirmed in his Councels. The fourth is, in receiving of appeales, and giving definite, determinate decisions, restitutions, and deprivations belonging to causes & persons Ecclesiasticall. Now all these acts have their effects in the power of jurisdiction; for the reforming power of it, is ordinarily and perpetually derived to Archbishops and Bishops *de jure*, to Arch-deacons and Deanes, *de consuetudine*, to bee executed by them in their Provinciall, Trienniall, and Annuall visitations: but it is principally restrained to the correction of particular private persons, that are irregular erronious disturbers of the Doctrine and Discipline of our Church. This power is extraordinarily *ad tempus*, granted to the Church representative in Convocation: (which

1. Eliz. cap. 1.

Petrus de Palude tract. de confessione art. 3.

His Majesties declaration prefixed to the Articles.

is not turned into a running regencie, rolling round to every particular *Presbyter*, though it bee not an ordinary standing Court) the calling of which is the second worke of supremacie. To this Convocation thus called, there is given power and licence, to deliberate of, to order, and do all such things as shall concerne the setled continuance of the Doctrine and Discipline of the Church of *England*, obtaining his Majesties royall consent in the proceeding and determinations, (as it is plaine in his Highnesse declaration; not onely his permitting prerogative indulgence, as some will conceive it) the obtaining of which royall assent, doth not suppose the power of the Convocation in making Ecclesiasticall lawes to be more restrained than the power of the Parliament in making Temporall, because the one seemes to proceed as it were promoted by petition, the other upon the meere motion of the King; for the King that gives power to both by his Summons will in all probabilitie grant as much power upon an humble advised petition, as hee doth intend upon his free pleasure; and that for many reasons which I will not presume to produce, I onely urge one plaine instance to prove it, *de facto*, *viz.* The Writ & Summons which King *James* of blessed memory directed to the pious prudent Archbishop *Whitgift*, wherein his most royall assent was expressed, which gave the Convocation power to treat, consent and conclude of Ecclesiasticall lawes, during the prorogued Parliament; and what power can be fuller (in this respect) I know not. So that to conceive, that the Convocation hath not so much power, because the originall of its proceedings is from the obtaining of the assent of the King in expresse Writ, is as if one should inferre that the Common Law hath not so much power in this Kingdome as the Civill or Ecclesiasticall: because the Kings Bench, and all other Courts, ground their proceedings upon originall Writs,

and

and Commiſſions that iſſue out of the Chancerie, which is a Court of Conſcience, whoſe proceſſes agree with the Civill Law; whereas this argument is of more force to prove the antiquitie of the Civill Law in this Kingdome, than the preſent authority of it. But before I proceed any farther, I muſt of neceſſity take a little time (though to ſome it may ſeeme an impertinent Parenthesis) rejoycingly to conſider the gracious countenance our pious Prince ſo freely ſhewes to this diſcountenanced, diſabled houſe of Convocation. Little did any thinke, (no not that able abſolute Statef-man, the laſt Lord-Chancellour, though he wiſhed it) that his Majeſtie could have beene ſo fully and faithfully informed of the ancient power and priviledges of it, as thinke of reſtoring them, ſeeing not onely in the opinion of the people, but alſo in the practice of the Lower houſe of Parliament it hath beene long diſmembred from that high Court, and loſt all the power and priviledges as eſcheated to the ſame, inſomuch, that it is queſtioned by ſome, whether ever it was a member of the Parliament or no. But it ſeemes his Majeſtie did ſoone apprehend it to be an eſſentiall part of it, and upon a ſhort ſearch diſcovered, that though heretofore it was a member, whoſe nerves were wreſted, diſtorted, diſtracted and racked from its naturall head, by extention to a forraine: yet there was no *diſſolutio continui* (as the Phyſitians ſpeake) from the head, and therefore not from the collaterall members; and ſeeing it was but a diſcontented diſcontinuance that did cauſe it to be ſuſpected and ſuſpended, it being now againe contracted and knit moſt firmely to the head, is united as cloſely to the members, and may ſafely exerciſe and enjoy all the power and priviledges that did of right belong unto it, with the Parliament; for though it was no reaſon, that it ſhould have the priviledges of the Parliament, when it was diſtracted from it, and aſſembled without it by vertue of the

Popes

Popes Legates Writ, by his Legantine authoritie, and so the power and purpose of it was forraine, and justly came within the compasse of a *Præmunire*, for the Clergie then was no true, or at least no trustie member of the Common-wealth, and so the Convocation cut off from the Parliament; yet when as it is now assembled with it, and by the writ of the King, and the Parliament is not compleat without it, being one of the three Orders, and that State which makes it have competent power in matters Ecclesiasticall, that it is not a meere temporall Court, and that in the judgement of those that had least reason so to esteeme it: certainly now the case is changed and therefore the course should be altered: for we finde 1. *Philip. & Maria, cap.* 8. that the Legate of *Julius* the third tooke great care to have Statutes repealed against the Popes supremacie, wherein he granted them to be authentically made, and consequently, that they had Ecclesiasticall power to enact them, otherwise by reason of nullitie, they had beene cancelled and abrogated in themselves. And *Antonius de Florebellis* an *Italian* Prelate in his *Panegyricke de restitnta religione in Anglia* saith, it was done *honorifico universi Anglorum consilii decreto*: in which speech, hee supposed their power to decree it, which hee would not have done, if he had held it to be a meere temporall Court, and hee must necessarily have so accounted it, if he did not reckon the Upper and Lower Convocation Houses, as members of it, exercising equall power with equivalent priviledges, especially in the determination of causes which immediately concerne the power of Ecclesiasticall dominion, and the definite decisions of Theologicall contestations, for the cause is not alike when such assemblies are gathered together by supreme authoritie concerning other affaires of the Church, and when they meet about making Ecclesiasticall Lawes; because the persons that are of the one, the King doth voluntarily

1 *Phil. & Mar. cap.* 8.

Florebellis Orat. ad Phil. & Mariam.

in

assemble, as being in respect of their qualitie most fit to consult with, and to consent to, them that are of the other hee calleth by prescript of Law, as having right to be thereunto called, and as the cause and persons differ, so the powers are divers: but the members of the Upper and Lower Houses of Convocation, are qualified in their persons, & capable by their priviledges, to be called to either of these assemblies, and therefore they properly pertake of the powers when they are so assembled. As it was plain in a particular example in that Parliament; for when Archdeacon *Philpot* was questioned for some words that passed from him in the Convocation house, he pleaded, that hee was priviledged to speake them, since the Convocation was a member of the Parliament; and this plea was not refused, but neglected. For they were not ignorant what was enacted by *Henry* the sixth, to wit, that all the Clergie, which be called to the Convocation by the Kings Writ shall fully use and enjoy all such liberties, as the great men, and Commons of the Realme have, that are called to the Parliament. And as they had the same priviledge, so it is plaine by a Statute *vicesimo quarto* of *Henry* the eight (though now abrogated) that they had once as much power in their receiving appeales from inferiour Courts Ecclesiasticall, when it was a *Praemunire* to appeale to *Rome*, or else-where. The words of the Statute, Printed in the yeare 1550: The partie grieved, may appeale to the spirituall Prelates, Abbots, Priors, and Proctors, convocate by the Kings Writ in Convocations: and if *de jure* the Convocation should not have power joyntly with the Parliament to enact Lawes *Dr. Stapleton* in his *Counterblast* might have some pretence to perswade the Clergie of *England* not to submit unto the Statutes made in Parliament, because no free-man is bound to be subject to those Lawes that hee doth not consent to personally and immediately by himselfe, or by some that mediately

Fox Act. Mon. pag. 1632.

8 Hen. 6. c. 1.

24. Hen. 8.

Conveniens est ut illi qui non plenissimè participant usum rationis, dirigantur in actibus suis per leges latas à perfectioribus.

Durand. Episc. Mildrensis de legibus conclus. 1. §. 3.

undertaketh for him upon his choyce. That is ſomething, and too much: but the Clergie will not conteſt with the Lawes, eſpecially ſeing the King (whom they ſo willingly obey) doth confirme them and particularly command many of them by expreſſe Proclamation: but yet there is reaſon to wiſh it were otherwiſe, for what reaſon is there but that the Clergies ſubmiſſion to the King to be his ſubjects, ſhould enable them to enjoy the libertie of ſubjects? But the State Eccleſiaſticall by this courſe is denyed the right of a free independent ſocietie in relation to collaterall members, when as one would thinke that not onely the whole bodie of the Clergie ſhould moſt fully enjoy all wholſome freedomes, but alſo that every particular perſon ſhould rather be enlarged than abridged of thoſe liberties he ſhould enjoy as a common ſubject; for the Clergie uſes to have more priviledges than the Commonwealth, and that upon good, and godly conſiderations. So that the reſtitution of the Convocation, was a worthy conſideration in his Majeſtie, ſeeing it is now as neerely and deerely, *de facto*, annexed to his ſupremacie, as the Parliament is, and ſo this ſupremacie is abſolute and full. For his Majeſtie having two capacities of government in him, the one ſpirituall, the other temporall, by both theſe he hath ſupremacie, & this ſupremacie is chiefly exerciſed in the calling, preſidencie, and diſſolving of the great aſſemblie of the three States; which high Court is not competently correſpondent to both thoſe powers in the King, unleſſe the Parliament conſiſt collective of ſpirituall and temporall perſons, which it hath anciently (if the Book *De modo tenendi Parliamenti* be authenticall) for that makes the Upper Houſe conſiſt of three States, the Kings Majeſtie, the Lords ſpirituall, & temporall; & the Lower of the Knights, Procurators for the Clergie, and the Burgeſſes; which both anſwer to the Kings mixt ſupremacie. So that as he is *ſupremus Juſtitiarius totius Anglia*, in relation to the

25. *Hen.* 8. *c.* 19.

Ridleys view of Eccleſiaſticall Lawes,

the temporaltie; so he is (as *Constantine* truly entitled himself in the Councell of *Nice*) ἐπίσκοπος τῶν ἐπισκόπων in respect to the power of jurisdiction in the Spiritualty. But to returne to my present promise, and purpose, which was to shew how the acts of supremacie have their effects in the Ecclesiasticall jurisdiction, derived to the Clergie. And I am now to shew what effect the power of promulgation of Lawes hath; which is in declaring his Majesties consent by confirming, and publishing the Ecclesiasticall lawes which are agreed upon in Convocation, (not excluding the advise of the Parliament, because the State Ecclesiasticall is not an independent societie, but a member of the whole:) and from that promulgation they take their first force and vertue. Whence it is, that they are called the Kings Ecclesiasticall Lawes, by which the Clergie is ruled in spirituall causes, according to which they exercise their jurisdiction *in foro exteriori & contentioso*: hence it is also that for this last age, the Ecclesiasticall Lawes of this Realme have so well agreed with the Civill, because they passe not without the assent of the supreame governour. And it were much to be desired, that Christian Princes would not onely permit lawes to bee made, and give force to them by their authority, but also that they would vouchsafe their personall presence, to be Presidents in all assemblies for that end, for then they would proceed and conclude to better purpose. As *Isidorus Pelusiota* writes to the Emperour *Theodosius* the younger, to bee resident and President in the Councell of *Ephesus*: εἰ μὲν αὐτὸς λαμβάνῃ καιρῇ, παρεῖναι τοῖς κρινομένοις ἐν Ἐφέσῳ: which is, *that if he would be pleased to take so much time, as to be present there, hee did not feare, that any thing that should passe, could be faultie; but if he leave it to all to be done by turbulent suffrages*, τίς τὸν Σύνοδον σκαμμάτων ἐξαιρήσεται; *Who can free that Synod from scorufull scoffings?* his Counsell was safe and seasonable, because the cause of

Eusebius in vita lib. 3.

Isidorus Pelus. l. 1. epist. 311.

feare was very probable and eminent. For in a Councell, where there is a Monarchicall authority, a ſupreame power in one, there will be more diſpatch in deliberations, more expedition in executions, than where multitudes of equals ſit alone; for they will bee many of them over-wiſe, and moſt over-wilfull to agree in one point; when as every ſingular perſon will broach his particular project, and propoſe it as a publique law, with reſolution to be a Recuſant to all their lawes, if they will not bee Proteſtants to his: and ſo it comes to paſſe too often, that they are forced to yeeld to one another, or elſe no law ſhould paſſe. Hence is that multiplicity, uncertainty, confuſion and contrariety of lawes in ſome diſeaſed States, than which nothing diſcovers a State to bee more deſperately declining, though they are good in their particulars; for they ſhew the multiplication of ill manners, which *per accidens* begot them, and they are likely to to make them worſe, becauſe they being appointed to amend them, are diſappointed and diſabled by their owne croſſe contrarieties. As in a naturall body, over-growne and over-flowne with ill humours, if a Philoſopher that conſiders onely a *Body*, neither ſicke nor well, gives that which is good, ἐν ἐυεξίᾳ, in the height of health, (as *Hippocrates* calls it) and when he hath done, an Emperick come that conſiders it as ſicke, but hee knowes not of what, nor the temper of the conſtitution, but boldly and blindly gives one medicine to all, for all diſeaſes; and at laſt the judicious Phyſitian come and conſider it as it is, and know what to doe, hee muſt firſt undoe all the other have done before he dare adminiſter that which ſhould firſt have beene taken, and by this time, the body is either paſt cure, or deſperate concluſions muſt bee tryed to recover it. Therefore happy is our State Eccleſiaſticall, in whoſe Convocation our ſupreame Soveraigne is Preſident, ſo that the lawes paſſing with his Royall conſent, are

In corruptiſſima repub. leges plurima, & laborat tam legibus quàm flagitijs. Tacitus Annal. lib. 4.

certaine

certaine, and easie to bee obeyed, by reason of their rarenesse and paucitie, which makes them pertinent, distinct, and free from confusion. And therefore I doe not a little marvell at learned *Baronius*, that since hee doth not deny *Justinians* the Emperour the power of making Ecclesiasticall Lawes, hee should so scrupulously and busily inquire, what should moove him to meddle with the making of them; when as I doe not doubt, but the Clergie then might request him to it. The last act of supremacie, is to receive appeales, and give determinate decisions, and this hath its effect, and is exercised in the Ecclesiasticall Courts. And they doe not exercise any power that is not derived from this supremacie, either immediately, or mediately. So that as the Lawes they execute, are the Kings Ecclesiasticall Lawes, so these Courts are the Kings, and all the processes and courses approved by his Majesties Lawes. *Non obstante*, that Statute 1mo *Edward. 6. cap.* 2. For the Ecclesiasticall Law is *Lex terræ quatenus in Regno Angliæ continetur Ecclesia Anglicana*; and the usages and customes of the Church, are the rights of the Clergie of *England*, without any relation to any forraine authority: and their ordinary processes lawfull by the Kings permission, and the custome of many Courts of this Kingdome, though they seale not with the Kings Seale: for not onely the Marshalls Court, and the Court of Admiraltie, which proceed according to the Civill Law, use their owne proper Seales, but even Courts of Counties Palatine, and the Courts of Corporations, where the course of the Common Law is for the most part observed. Now there is no ground for a *præmunire* in them, though the words of the Statute runne [*to Rome or else-where*] for by [else-where] seemes to bee meant, the *Romish* power or Court, (which was not then at *Rome*, but at *Avignion* in *France*) and not our Bishops consistorie: For I beleeve, that State was made to free them

Baronius Annal. Anno 528.

Babylonem Gallicam, ut Petrarch. ep. 123.

them as well from the forraine uſurpation, as any other of the Kings Courts, as the pragmaticall ſanction of *France* doth, which was of the nature, and I conceive in imitation of it about the ſame time, by *Charles* the ſeaventh, brother in law to *Edward* the third. So that the Biſhops reſident in the Land had great reaſon to deſire ſuch an Act to free their Conſiſtories from forraine inhibitions; and the Lords Spirituall (that are ſaid not ſo fully to conſent to all the branches of it) where without doubt, the Abbots and Priors *aliens*, whoſe lands were alwayes to bee ſeiſed by the Kings prerogative, (*ratione guerre*) & therefore had much more reaſon to feare the looſing of them by any other way; when as the Biſhops were as much in the Kings power before, becauſe his Highnes had then the right to ſeiſe a Biſhops Temporalls for a contempt: which contempt, or any other juſt cauſe to ground a ſeiſure, is in all probabilitie to be apprehended by the Kings Majeſtie, aſſiſted by his ſupreame Counſell; becauſe the proceſſe iſſueth from the power of his Royall prerogative, not to bee interpreted and extended to all the new-grafted branches of the old Statute of *præmunire*, (which ſeeme to have turned the nature of the ſtocke;) for then we might feare as many depredations, if not deprivations, (if the King were not really religious) as the Orientall Emperour *Iſaacius Angelus*, (adviſed by that great Lawyer bold *Balſomon*) made in one yeare, ἵνα πάντας τοὺς κτήτορας μὲ ἀγχόνῃ τιμᾷ. Now that ſome moderne immoderate interpretations doe ſtrive to turne the intention of that Statute, I will draw an Hiſtoricall argument from this preſent example. *viz.* K. *Rich.* 1. curbing this profane Tyrant, (as *Nicetas Coniates*) μὴ βαστάσων τὸν πλοῦτον ἐπαίρεσθαι εἰς ὑπερηφανείαν: and *Rich.* 2. not being ignorant that the Emperours irreligious contempt of his Patriarchs & Prelates, was the greateſt cauſe of being eſteemed a Tyrant: & further alſo how he was challenged and derided by the Emperour

Hervæus Natal. de poteſt. Papal. & Eccleſ.

Stanford prerogative in proceſſe appertain.

Idem ibid.

Nicetas Coniates Annal. lib. 2. Iſaaci Angel.

Annal. in Alex. lib. 1.

Emperor *Fredericke Barbaroſſa* for his ſupercilious carriage towards his Biſhops whom hee ſent Ambaſſadors. K. *Richard* the ſecond knowing but this would never from the Statute of *Præmunire*, with an intention to intrap his Biſhops. Yea wee may fully free him from any ſuch meaning if wee do but conſider that one maine ground of that Statute, was the grievance that Biſhops were prejudiced by the Pope in their juriſdictions. But however it was then meant, I am ſure it cannot extend to them now unleſſe we will deny the Kings ſupremacie over all cauſes and perſons Eccleſiaſticall; and then they are not the Kings Courts; but if we grant the Popes ſupremacie, we muſt deny that any of his Courts Eccleſiaſticall can incurre a *Præmunire*: yea though wee extend the word [elſewhere] to the largeſt unthought-of ſignification, ſeeing they are as ſufficiently ſecured againſt it, as any of the Kings temporall Courts: for not onely the high Commiſſion ſits by letters Patents of Commiſſion, exerciſing the Kings immediate Eccleſiaſticall authoritie: but all Biſhops alſo ſit in Conſiſtorie by vertue of the Kings Broad Seale: for the election of a Biſhop, which enables him to exerciſe the power of juriſdiction, and conſequently to ſit in Conſiſtoric, primarily proceeds from the Kings great Seal annexed to the *Congé Deſlier* directed with his Majeſties miſſive letters to the Deane and Chapter; and moreover upon their certification of the Election the King ſignifieth the ſame to the Archbiſhop of the Province by his letters Patents under the great Seale, that hee may confirme the Election and conſecrate the perſon: and beſides this eſpeciall royall permiſſion, and approbation of every particular election granted by our preſent ſacred Soveraigne, in relation to the perſon of every nominated Biſhop, there are alſo Charters deſcending from the Crowne to every particular See, in right of their erection, which give ſecuritie of this juriſdiction to ſucceſſion; and

if

if all this be not enough, surely *Magna Charta* is *abundans Cautela* in this case (if the first Chapter be not held Apocryphall, being it was before any grant was to the rest of the Realme) I omit to mention many particular Statutes as *Articuli Cleri* in 9. of *Edward* the second: & *pro Clero* 15. & 28. of *Edward* the third, which have of life enough in them, if the King please, though Abridgers pronounce them expired. A prohibition, I grant may lawfully lye there, because it is safe for the whole State, that every jurisdiction should have its bounds, and keepe or be kept in them. But yet I will not say so in generall, but we must admit them with distinction of prohibitions, one of Law, another of Fact. Now that prohibition which is of Law, according to the expresse words of the Statute, (which are commonly large enough) is the prohibition that is lawfull, as for a prohibition of fact, which is grounded upon sophisticall suggestion (seldome fundamentall in the copie of the libell, without the judgment of the Kings Courts upon it, in my opinion it is not right, and is many times the cause of wrong, either in unjustice or delaies; yea & an abusing of the Statute with the Kings Courts: whenas if such a suggestion were seconded with a surmise of the Sages of the Kings Bench upon view of the libell it is most probable to be right; and I durst to venter any cause meerely Ecclesiasticall that should most concerne mee into their hands not doubting of a conscionable consultation. And for the prohibition of Law, the most I conceive it inferres is, to make all the proceedings void, as *Coram non judice*: But if I might know, what degree and qualitie of offence it is, for a Court temporall to hold plea of a meere Ecclesiasticall cause, I should more easilie apprehend the scandalous nature of the ground of a prohibition, which it may be, is the same with a writ of errour in the temporall Court: since that a conclusion doth not ensue upon that, but after a prohibition grounded

ed upon a suggestion. Well, *ita videtur* was the forme of the Senators safe giving their opinions, and I hold it wisdome for mee never to be peremptorie, especially in a matter so uncertaine and involved. So then, all the proceedings of these Courts, have their power from this last act of supremacie, as well in primitive processes of inquisition, as in punitive processe of execution. As this most authenticke authoritie is most seene in the proceedings *ex officio*, which are not onely, nor alwaies by oath, (as many are mistaken.) These are by immediate commission, where an Ecclesiasticall cause is criminall, especially *ex mero officio*: not promoted at the instance of any partie, or by processe informative. And so also the utmost punitive processe Ecclesiasticall, which is a writ *de Excommunicato capiendo*, is evidently derived from the Kings power, and issueth immediately from his favour to the Church, that it may be more easily obeyed, and is divers and variable in sundrie governments, and executed by temporall power, being nothing of the nature of the spirituall excommunication, but an accession *concessâ permissione ex devotione Principum* (as *Johannes de Parisiis* saith against *Boniface* the eight:) for this writ issueth out of the Chancerie upon the Bishops *significavit*, that the partie hath wilfully stood excommunicate 40 daies, *majori excommunicatione* (which limitation I finde to be a priviledge of the Church of *England* above all Christendome) and the words of the writ run thus: *viz. Quòd hujusmodi breve nostrum de gratia nostra procedat*: which words shew that it is a processe annexed to the power of excommunication by the Kings favour, at such a time as the Ecclesiasticall Judge doth certifie that he can proceed no farther (according to the rule in the same Register) *Potestas Regia Ecclesiæ in suis querelis deesse non debet*: and indeed it is but a calling upon the secular power, and leaving of those that are contumaciously incorrigible in the

Iohan de Paris. de potestate Reg. Concl. 1.

Regist. in brev. original. p. 68.

Pag. 65.

hand of Civill justice, that seeing they would not be reformed by the spirituall sword, they may be purged out of the Common-wealth if the offence require it, (as *Synesius* speakes in the like case) τὸ δημόσιον ξίφος πόλεως καθαρτήριον: the publique sword, which is the civill Purgatorie, is to punish those whom the spirituall punishing censures of the Church do not worke to amendment, *ut disciplinam quam Ecclesiæ humilitas exercere non prævalet, cervicibus superborum potestas Principum imponat.* As for the judgements of Bishops Consistories, as they are derived from the power and law of Christ the great Bishop: so they are like the judges of them, who are rather Arbiters *& amicabiles compositores* (as *Panormitane*) than Judges ruling by the austeritie of authoritie, so that poore defendants may flie to them, as to their Altars, who are Ministers of the altar: and in this sense, that which *Architas* speakes is most true, ταυτὸν εἶναι ἐναντιτὴν καὶ βωμόν, *Idem esse arbitrum & Aram.* And though they have no forcing power, but from the King, and no power of any force against the King; yet the greatest and best Kings have yeelded to them in their advice, not as Prelates, but as they are Fathers in God, (as *Alexander* the great said to his father King *Philip* οὐ γὰρ ὡς βασιλέως, ἀλλὰ ὡς πατρὸς ἀκούω: that is, I do not heare and obey you, as you are supreme King, but as you are my father;) farre unlike the Bishops of Rome, who will rule the highest Princes, and yet professe themselves servants of servants; which makes mee call to minde, the observation of the wisest King *Salomon*, that one of the chiefest instruments whereby the earth is shaken, is, a servant that rules over Princes. And as they usurpe rule, so they usurpe the sword of temporall Princes, and carrie it in the spirituall scabbard; and drawing it, doe more hurt in their passion, than they can help by their priviledge; when as they found it soberly and orderly put up by *S. Petrus* when Christ was at

Epist. 121.

Isidor. Hispal. de summo bono. l. 3. c. 53.

Arist. Rhet. lib. 3. c. 11.

Dion. Chrysost. περὶ Βασιλείας β.

Prov. 30. Vt in principatu beatissimum est, non cogi, ita miserimum, non suaderi. Lipsius epist. dedicat. Politicor.

at his elbow to heale the greatest wound that hee could make. Thus is it somewhat plaine, how Ecclesiasticall power is derived from the King, as hee is supreame head in lawfull and full authority over all causes and persons; which double power in my conceit, the custome of the ancient *Persians* at the death of their Monarch doth fully and fitly expresse, for the Lawes are silent: ἠχ' ὁ νόμος ὁπότε βασιλεὺς ἀποθάνῃ, ἵνα αἴθοντο ὅσου ἄξιός ἐστιν ὁ Βασιλεὺς καὶ ὁ νόμος: yea and their ἀθάνατον πῦρ, their holy eternall fire which every one worshipped in his private house as his household god, was put out when the Emperour died.

Brissonius de Rergo Persico lib. 1.

§ 5. The next thing which I promised to declare, was how the honour of the State Ecclesiasticall is annexed to the power by the Kings Lawes and Royall prorogative. The honour of the Clergie is contained in revenues and priviledges, which are united to the powers of order and jurisdiction; which powers although we should grant that simply considered in themselves, they are not distinguished *jure divino*; yet I am sure none will deny that they are distinct, *quoad extensionem, permissione & approbatione divinâ*, as *Johannes de Parisijs* doth distinguish the power given the Apostles into sixe parts, in respect of so many severall acts of execution, the fift of which is *potestas dispositionis ministrorum, secundùm quosdam quoad determinationem jurisdictionis Ecclesiastica ut vitetur confusio*. And as they are thus distinct according to the excution, and stand so confirmed by the positive Lawes of the Land; so they have distinct portions and priviledges according to the same Lawes: yet after a different manner, especially in respect of the portion. For the power of order (which hath maintenance of diverse kindes, as tithes, oblations, *Gleabland* and *Mortuaries*) holds them all according to the lawes of the land, as due to the Clergie, for executing the power of order, but by different acts of these lawes; as *Mortuaries* are permitted with

Κτήματος δόσις τιμῆς σημεῖόν ἐστι. *Arist. Rhet. lib. 1. cap. 5.*

Ioh. de Parisijs de potest. Regali & Papali, c. 12.

moderne legall reſtraints, and *Gleablands* granted, Tithes and Oblations confirmed, and all conſtrained to be paid. Now tythes that are only confirmed by the Kings poſitive Lawes, are ſuppoſed to bee due by ſome other Law of higher nature than the Kings; which is not any foraine Law, as the *Ius Eccleſiaſticum*, (as *Bellarmine* in this particular caſe calls the Canon Law) it muſt bee then by Law divine; or immediately ariſing from ſupernaturall & morall conſiderations, which Law we grant to be poſitive, yet not meerely humane, nor changeable in reſpect to us: and they muſt neceſſarily runne into many groſſe errours, that take onely ſuch Lawes for poſitive as are invented by men; and thence conclude them mutable. And therefore I preſume that the learned *Selden* doth ſo underſtand the poſitive Law, by which hee holds tythes to be due, not in oppoſition to divine and morall; but as ſpecially diverſe from it (as it partly appeares in the whole drift of his Hiſtory) where I doe not beleeve that any can finde that hee ever delivers his judgement, denying them to bee *jure divino*; ſo that in my apprehenſion, and I hope not againſt his intention, he may doe the Church much good in relating what wrongs the Clergie in all ages have ſuſtained. For his Hiſtorie is onely *de facto*, what hath beene done; hee gives not his judgement *de jure*, what ought to have beene done, which if he had, he would aſſuredly have pronounced for them; and this I am forced to beleeve, when I conſider his exact generall knowledge, & the reverent reſpect he beares to authentique antiquitie. I do not in this confeſſe that they are not *jure divino*, becauſe I affirme not them to be due by the Law of *Moſes*, that is no direct conſequence upon my propoſition; for not onely the judiciall Law which was the command, and I beleeve in moſt points is ſtill the Counſell, of the moſt wiſe God (eſpecially in this particular where the ground of the command is morall) doth proportion a tenth part

Bellar. de Cler. lib. 1. cap. 10.

Hooker Eccleſ. Polit. l. 1. §. 17. Bellar. de amiſ. Gratiæ, l. 1. c. 1

In concluſionibus juris naturalis ſunt gradus; & immutabilitas, qua eſt conditio juris naturalis, magis apparet in aliquibus quàm in aliis. Durand. Epiſc. Meldenſis de legibus Concluſ. 9.

as

as necessary then to be paid; and though the same necessity binds us not now, yet the correspondencie of the conveniencie (as I conceive) doth hold us as strongly to it as it did that State. For I see no inconvenience in tythes-paying in our State more than in theirs; but onely they were brought home unto Priests, (which onely exception Mr *Cartwright* makes against tythes:) But I stand not only upon this, but I am also partly perswaded, that they were confirmed by Apostolicall approbation, though it bee not in expresse words so set downe. For though the Apostles did all preach the Gospell, yet they did not all write, neither did those that did write commit all to writing which they did teach: for St *Paul* adviseth the *Thessalonians* to keepe the traditions they had beene taught either by word or epistle. And therefore it is freely acknowledged by a famous Orthodox Divine of our owne, *non omnia esse scripta in libris veteris & novi Testamenti, qua Apostoli aut docuerunt aut fecerunt; sed fatemur Apostolos ritus & consuetudines sanxisse, non autem scripsisse*: hence it is probable, that they might by consent confirme them, because it was not onely a custome and a Law then in force, and they did not delight to innovate, but upon necessitie, but also because we doe not finde one word of their abrogation or alteration. Yea it seemes to me that the Author of the Epistle to the *Hebrewes* entitles the Ministers of the Gospell to them by a more particular right, (as Bishop *Andrewes* calls it) *jure Benedictionis*, for in it not onely said that *Abraham* paid *Melchizedech* tythes as he was the higbest Priest, but that hee received them and blessed him; which implyes blessing to be the duty he performed for them. And whatsoever we hold of these tythes, I assure my self the Primitive Church did so conclude, otherwise they would not with such a generall consent have bound themselves to that measure and portion of maintenance. I speake of the Church *in statu puro*; it was otherM 3

Annot. in Rhem. Test. 7. Heb.

2 Thes. 2. 15.

Whittaker. cont. Bellar. quæst. 6. cap. 6.

Heb. 7.

Benedixit non tantùm ut privatus ex devotione, sed ut superior ex auctoritate.

otherwise with them I confesse *in statu perturbato*, in persecution; but not out of good choyse, but hard chance. For observe but from the first generall Councell of *Nice*, (not to reckon upon Provinciall Synods, because they doe not bind our State but onely in point of Doctrine and Example) peruse them till the last of the *Lateranes*, and you shall finde they are plaine and peremptory. And not onely in the acts which in some Councells are erroneous, (as in the second Councell of *Nice* being the seaventh generall) but in the Canons which were received as generall Ecclesiasticall determinations: there is a Canon very particularly passed with a generall consent; so in the Councell of *Laterane* under *Innocent* the third, where it is particularly set downe that the *English* Ambassadours were present, there is a Canon that runnes thus, *Statuimus quòd solutio decimarum præcedat exactionem tributorum.* We have nationall Councells also as at most Coronations of the Kings before the conquest, and also immediately upon the conquest; and many generall Charters wherein tythes have beene confirmed to the Clergie, and that with solemne vowes and deprecations, which dedication to God, if there be no other divine right, puts the detainer of them into *Ananias* and *Saphira's* case; because that though while it was wholly with them, it was their owne; yet when it was thus seperated by their solemne vowes, then sanctified by the solemne act of Bishops; not onely ratifying the Founders vow, but consecrating them with the Church to divine uses, the nature, property, with the propriety was changed. So that I will conclude these premises, that the positive Law by which tythes are due to the Clergy, is not meerely humane, but mixt and preternaturall, because it binds men as they are members of the supernaturall society of the Church visible: and because they have bound themselves by it in divine consideration. But yet

Balsamon epist. Nicen. secundo can. 12. *Concil. Later.* 4. *can.* 54.

Acts 5.

they

they are enjoyed by the confirmation and constraining power of the Kings lawes: And were it not for the lawes, as they are an undoubted due, so they would be a perpetuall debt with many; and that out of severall grounds: some desiring to have stipends instead of tythes, doe too willingly remit them for a sufficient stipend though it be uncertaine, especially to their successours. But I hope this ground will never be generall, as long as the Kingdome is a Monarchie, for it is a mysterie of free Cities and Democracies, ὃν δὲ τοῖς δεμοκρατίαι μιθὸν ἐκκλησιάζουσι: If it were come once to that wee should soone have cause to complaine to the Bishops of that which they could not bee able to remedie, namely of that which *Synesius* doth informe his colleague *Theophilus* of τίνες Βασκάντιβοι, (a word made of the Latine *Vacantes* or *Vagantes* (as *Turnebus*) to signifie vagrant unsetled stipendiaries, that changed from place to place, like *German* mercenaries, for more gaine. Yet I must needs confesse, that at the first originall of Vicarages they had but stipends, but it was unjust, *Vicarii stipendio sunt contenti*, which was but a permitting provinciall constitution in favour of the Abbies and religious houses to which parsonages were appropriated. Another meanes whereby the due payment of tythes is impeached, is, the customes of many places: which are lawfull and lawdable with these conditions; If they were not the inventions of men, but begotten by time, and if they bee as reasonable as ancient: *Nam debent esse tam necessaria continuatione quàm recta in ortu*: and where the law is defective, for customes against lawes are void by the Civill law, if they be not expressely confirmed by the supreme power. With these conditions let customes bee enjoyed. But the next pretence is prescription against tythes once paid, and that wee may admitt with his limitations as that it extend not to those things that cannot be alienate, that are annexed to the Crowne, or if it stand not

Arist. Polit. l. 4. cap. 13.

Synes. epist. 67.

Linwood privin. de officio Vicarii. quoniam. c.

Cujacius in corpus Vlpian. tit. 10.

contra

Dier. reporti fol. 373. *contra statutum postea editum*, & be grounded upon a good custome, and the person qualified, to possesse the thing claimed; for lawfull prescription cannot proceed without as lawfull possession. The want of these lawfull limitations made the Councell of *Laterane* under *Alexander* the third, condemne and controule the grand prescription of *Clyentary* tythes continued from *Charles Martellus*. The taking away of which shirking shifts made many devise another, which is Priviledge either of societies or persons, granting immunities from payment of tythes, which pretence of all others (as farre as I can understand) cannot be made good by the most favourable forced interpretation that may be; for they are void and nullified according to all the restraining Provisoes that bound a priviledge. For they were granted against the law of God and nature, not onely besides it; and are since revoked by the same power that granted them, as *Innocent* the third in the fourth *Laterane* Councell. And in this particular Kingdome *Henry* the fourth made many Statutes to restraine those priviledges granted to the *Friars*, especially providing that none should have any *de novo*. But that which proves them void in this Kingdome, is, that not onely the particular persons, but also their whole societies are dissolved and destroyed; and so they are expired and extinguished with them: *Destructo Collegio perunt privilegia*, especially when their revennes are confiscate, *& non privilegiatus præscriptione, non succedat privilegiato*. But when other meanes began to be restrained, they procured appropriations and annexions of benefices presentative, not onely in point of patronage, but also they tooke the whole due without discharging any of the duties; which last and worst pretence I will not denie but the wit of man may make it plausible, yet I am sure it will never bee pleasing to the will of God. Monkes and Friars were the authors of these immunities and appropriations;

Duarenus de benif. l. 6. c. 1.

4. *Hen. 4. c. 7.*

Bartolus ad Collegia si qua fuerit de Collegiis. ff. l. 47.

priations, (to omit customes and prescriptions, because they do not so much wrong, and have more ground of right:) I do not accuse the Monkes who lived in the first five hundred yeares after Christ, who lived holy, and laboured in their callings, and had no such priviledges: Neither do I condemne *Benedict* who was the father and first founder of all that professed a regular life in a sequestred cloyster in the Westerne Church. For hee had good reason so to doe, considering the tumults and many broiles that fell out under the government of *Justinian*, & by reason of the continuall incursions of the barbarous nations into *Italy*. But when he was thus shut up, many resorted unto him, admiring his devotion; at last they tooke rules from him, and grew into a fraternitie of the *Benedictines*: and from them sprang many other Orders; who living in a life far different from other men, bred great wonderment in all, & that admiration procured adoration of their profession, and made those that were able bestow great revenues upon them: Yea they did so dote upon them, that after a while they endowed them, if not with the greatest, yet I am sure the best and fattest part of their Countries; insomuch that most of the most pious Princes of Christendome were forced to make a Statute of *Mortmaine*, (like *Moses*, who made the first Statute of *Mortmaine*) for these revenues which they possessed were in a dead hand, that did no good to the Common-wealth. Whence wee may observe that this Statute was rather for the benefit of the Commonwealth, than made out of the dislike of the Church meanes; especially since these Friars were not of the Clergie, but meere Lay-men; and the Clergie had as much reason to desire a law for Amortization as the Common-wealth, because as they had conferred lands and goods upon them, (for not onely Princes, but Popes were taken with admiration of them) so they were also more charged with the publique, and had lesse meanes.

Hospinianus de origine Monachat.

Exod. 32.

And this Statute gave the occasion to them to procure priviledges and immunities from payment of tythes. For though at first for a time they came to their Parish Churches, yet when they procured to have Churches or Chappels of ease for their fraternities; then they obtained under *Alexander* the third in the *Lateran* Councell, when he condemned prescription, to be confirmed & priviledged from payment of tythes of those lands which they tilled themselues; when as *Adrian* the fourth our country-man, his immediate predecessour had revoked or restrained the immunities granted to them by *Paschall* the second. But when *Innocent* the third, who loved to be doing and undoing, restrained the grant of *Alexander* the third, which they perceived did much prejudice their plentifull profit, they procured dispensations from the Pope to have parsonages appropriate to their houses in a more great abundance. For I deny not but some were annexed before, as to the Abbey of *Crowland*, and others; yet these were granted more by the Popes licence than the Princes authoritie. And then began the Schoolemen to entangle the right of tythes, & their curiositie and their covetousnesse enabled them, and put them upon it: for when, under *Innocent* the third, they multiplied into multitude, (as there were sixteene orders set up in that Centurie) and hee limited and lessened their revenues, they sought to maintaine that by right which before they had obtained by wrong, and retained by protection and priviledge. Then began the contention betweene the Schoolemen and the Canonists about the right of tythes; and I conceive *Innocent* the third to be of the Canonists part, because hee was the first great advancer of them in the Church, and no free friend to the Friars. This I have conceived by comparing Church histories and the Councels with the Canon law especially Decretalls. These wrongs of the Clergie which were so brought in & upheld, so continued in

Duarenus de benef. l. 2. cap. 1.

Flavius Chen. Compend. Bulla tom. 1. Paschal.

in our Kingdome till *Henry* the eighth of famous memory; (who either intending a reformation in religon, seised upon the revenues of religious houses; or ayming at their revenues set upon rather than finished a reformation,) confiscated their appropriations to his use, as escheated with their lands, and seised upon these benefices which were not theirs, but morgaged as it were *in commendam* to them, and he possessed the Crowne of them, and then sold them to private men; who hold them by as good right by the Kings conveyance, as the Monasteries did by the Popes priviledge, but no better, though some would willingly perswade themselves that they hold them by as right and just law, as they doe any purchased inheritance; for they say, though they were once spirituall, yet now they are made temporall and Lay-fees by the lawes of dissolution; especially in the two and thirtyeth of *Henry* the eighth. It is true that those statutes apply diverse law termes, (I will not call them meere law fictions) to those things that properly belong to temporall inheritances, and have made them demandable by originall writs, and given order of conveyance, by deed, fine, and act of Parliament; which as it is bootelesse, so it is contumacie in any private subject to question: onely thus much I hope I may say without generall offence, or disturbing of the statute, since I conceive it the truth, and yet not all the truth; I doe not yet understand how that can bee made manifest to be a free Parliament in that point. For I doe not beleeve that the lower House did either propose, or generally approve it, though they assented to it. Neither do I thinke, that King *Henry* the eighth did freely propound it out of his owne choyce, but that the necessity of the present time did put him upon it. And I hope he intended to call it in, if he had lived. As *Dionysius* the King of *Syracusa*, when his treasure waxed too short for a great imployment: ἐκέλευσε τοὺς ἀναθήματα ἐν

Ius Subtile est jus, sed non fas, licitum, at non legitimum sed astu legitimatum.
Brisson. de verborum signif.

Polyan. in Strateg. lib. 5.

Ασκληπιοῦ ὡς Βέβηλα ὀπὶ ἀγορᾶς πρακηρύττειν: he commanded to take the treasure of *Æsculapius* his temple, & to proclaim them to be sold in the market, as profane and common commodities, which the *Syracusans* were very eager to buy, because they had Church-bargaines. But when hee had gotten what his necessity required, he presently sent forth an edict, εἰ τίς τι τῶν Ἀναθημάτων ἠγόρασεν ἀποδιδόσθαι τῷ Θεῷ, that if any one had bought those devoted treasures, they should againe restore them to the Church. This course had beene somewhat just, if he had let them enjoy the treasures, untill they might have regained by them what they cost, (as perhaps most purchasers of Impropriations have.) But that which most hinders mee from apprehending it to bee a free pure act, is, because the most active and spirituall part in Parliament was pittifully passive in it; it was at the best, but mixt by reaction in the patient Clergie, who did neither absolutely obey, nor resolutely resist, but silently suffer that to passe, which vvas not right; and therefore the act was not free from wrong. *Qui tacet consentire videtur; id est, taciturnitatem inducere consensum in ijs in quibus expressus consensus non requiritur, & in judicialibus confessionibus.* Neither doe many of the judicious Sages of our Common Law so fully approve of it. Yea Sir *Francis Bacon* in his Considerations of the Clergie of *England*, dedicated to King *Iames* of peaceable memory, confesses, that he was of opinion, that all the Parliaments, since the twenty seaventh, and thirtie first of *Henry* the eight, stand obnoxious and bound in conscience to God, to doe somewhat for the Church, to reduce that patrimonie; or that, since they have debarred the Church of her dowry, they should make her a competent joynture. Which opinion of his, is more ingenuous, in my apprehension, and advantageously pertinent than theirs who only enveigh against the Parliament, and *Henry* the eight the

Gephan. in L. qui tacet. 142. ff. d. divers. reg. jur.

Consideration 6.

the head and rule of it: which act (admitting the necessitie then that urged him to use the power of Ecclesiasticall dominion) is not altogether inexcusable, (though this reformation did more wrong to the Clergie than the conquest:) For what hee was to doe, was to be done in haste; and in that routing-rush of reformation, who could expect but the part corrected, must needs be for the time neare to utter ruine; though happily, if the author of the reformation had lived to finish it, amends would have beene made in some measure. And this opinion of this most able Chancellour seemes to make a continuall claime for the Church, that shee may not bee barred by Non-claime, that her title of right be not extinguished by suspence, or the possession of the Occupant. But *Henry* the eight did rather put downe the *Roman* Church, than set up ours; as *Alexander* the great pulled downe the *Persian* Monarchie, but set not up the *Gracian*. But to pull downe one, was the onely way to set up another; as *Aristotle* rooted out all the opinions of the former Philosophers, to set up his owne; or as *Hippocrates*, who being *Librarian in Coos*, παλαιὰ τῶν ἰατρῶν ἐνέπρησε βιβλία (as *Zetzes* in his *Chiliads*) hee burned the bookes of all the ancient Physitians, to set out his owne, or theirs as his. So that if a publique reformer begin once to alter, hee must of necessity, for the time, stirre, if not remove, more than he first intended, especially if he be crossed and curbed by an adversary, that stands strongest by that part which needs reformation, and by that in it, which will best helpe him in the performing of it. For hee that will prevaile against an incroaching enemy, that hath a party in his Kingdome, must be sure with all apt industrie, to observe and oppose him in his counsels, by bereaving him of his Counsellers & Agents, either by taking them away at once, or putting them as Exiles from him, or pulling them to himselfe, which is the safest and honourablest course.

Chil. 8. num. 155.

Hottomanus in Bruto fulmine, de prima nullitate ob crimen Majestatis, & perductionis.

course. Now the Pope who was the absolute insolent adversary to *Henry* the eight, stood by the Monkish part of the Clergie, and chiefly by their rich revenues; and therefore, it behoved the King, either to reconcile them to himselfe, or utterly to ruine them (as fell out, because they rebelled.) And in the prosecution of them, he ranne a cleane contrary course to the Pope. As I remember, when *Cyrus* tooke *Babylon*, he drew *Euphrates* drie, and made all land: And *Xerxes* when he went against *Athens*, would have made all sea; Ξέρξης τῶν περσῶν τὴν μὲν γὴν ἐποίησε θάλασσαν: So *Henry* the eight made all Lay and land, when he intended to be free from the usurpation of the Pope, and the Pope made all spirituall and his See, when he aimed at his absolute unrestrained extravagancie both in See and Scepter. This heate and height of opposition made the King proceed too farre, which, I beleeve, he did somewhat perceive, in that he did retract in some particulars from the first course: As in erecting some Episcopall Seats, and more Cathedrall Churches, out of the ruines of Monasteries and Priories. And in that he made of the appropriation of *Royston*, a Parish Church. And I presume he might have proceeded farther, if he had not beene soone after cut off by death, and hindred by profane and sacrilegious instruments while he lived, who, I perswade my selfe, were the same men and meanes, that tried to procure the dissolution of the Bishopricke of *Durham* by act of Parliament, during the nonage of *Edward* the sixth. Perhaps out of a pretence of scandall, holding that question affirmative against *Thomas*, *quòd Episcopi debent temporalia dimittere propter scandalum*; and happily they might incense the King to bee of their opinion, because *Thomas* brings a scandalous example of *Thomas Becket*, that did *repetere temporalia Ecclesiæ cum scandalo Regis Henrici secundi*. But they should have beene so religious as to distinguish betwixt the dissolution of Abbies, and Bishop-

Dion. Chrysost. περὶ Βασ. γ.

Monachi ferocientes exasperant Lutheranam tragœdiam in suum malũ. Erasmus epist. Waramo Archi. Cantuarien. lib. 20.

33. *Hen.* 8.

7 *Edvards sexti* a not-printed Statute repealed 1 *Q. Mar.* Parliament 2. *c.* 3.

Bishoprickes, since they were really distinguished in their constitutions (not to speake of their confirmation nor consecration) the one being *jure divino Apostolico*, the other but *jure Ecclesiastico positivo*; so that though in politick prudence in relation to particular State occasions, reason might give way to the one, yet religion would not permit the other. Surely King *Henry* the eight would have beene so farre from approving this project, that hee would in time have distinguished upon the dissolution of Abbies, betwixt their lands and their appropriations, and have plainly discovered that the truest criminall cause why God by his power wrought their ruine, was their sacrilegious detaining of spirituall maintenance, and what hee would have then inferred, let them conjecture that are their successours in impropriations. So that the unhappinesse of *Henry* the eight, is, because men judge by the event, not knowing the intent, (as *Paulus Jovius* with many Moderne modest historians exclaime of him.) *Jovius de vir. illust.*

In my minde, hee may be well paralleled with *Charles Martell*, the Champion of the Church, who, when hee defended the Pope, was the first that was called *Christianissimus* among *French* Kings, by *Gregory* the third; yet he was the first that robbed the Clergie in *France*, by giving *Clientary* tythes, which they call *feudall*, to his followers: yea and he deposed the Archbishop of *Rhemes*, and disposed of the Bishoprick to one *Milo* a *Cavaliere*: So *Henry* the eight had first the title of the *Defender of the Faith*, for publishing a booke against *Luther* (which *Bellarmine* saith, Bishop *Fisher* wrote) and presently after fell foule upon the Clergie. So that (I beleeve) the Pope repented of the title, and was ready, not to give him so good a title, as his predecessour *Julius* the second gave *Lewis* the twelfth of *France*, in his Bull, which *Guicciardine* notes to proceed from malice, *Nulla nominandolo, non pio Christianissimo, ma illustrissimo*: that is, How! would *Baronius Anno 759.* *Bellarmin. de script. Eccles.* *Guicciard. hist. lib. 11.*

would not call him the most Christian King (as was his title) but the most illustrious. But let him bee as bad as they will make him, yet I dare excuse him, as *Baronius* doth *Marcellus*, and say of him as *Guicciardine* said of the Popes, that hee was an honest man, because hee was not more wicked than most men. I have in this as far as I am able with a good conscience, cleared our State from the forraine staine of sacriledge. But I cannot free particular men from it, which have no pretence for what they detaine, or take from the Clergie, but onely that they are not convinced that there is such a sinne as sacriledge; and that because they hold not tythes due *jure divino*, and that because they desire still to have and hold them by the law of the Land, and that they may more colourably continue it, they hold no such sinne as Symonie, that the partie presented may make a symoniacall contract, whereby they are confirmed and corroborated in their sacrilegious usurpations. But I will not dispute the point, whether there be any such sinne as Symonie, in relation to a private presentation without respect to orders taken with it, because I am sure, none will deny, but where there is a symoniacall contract, there is perjurie in the Instituted. And it is to be observed, they that so come into the dignitie of the Church, committing an outragious act of irregularitie, prove most an end pernicious instruments; as *Isidorus Pelusiota* saith of *Caiphas*, Καϊάφας ἱερωσύνην ἐπρίατο, ὅτε κατὰ Χριστοῦ ἐξώπλιση. that is, that *Caiphas* bought his Priesthood, and therefore armed it against *Christ*. As for sacriledge, I grant it is not easie for men that are guiltie of it, to be convinced that it is a sinne. For sinnes of omission cannot so quickly and sharpely touch the conscience, because they are the breach of an affirmative law which doth not so strongly check the vice, as informe to the dutie; especially when pleasure or profit have bribed the judgement. For I feare, some hold stolne

Guicc. Hypomn. Polit. 123.

Isidor. lib. 1. *ep.* 315.

tythes,

tythes, the sweeteſt part of their inheritance, as it is ſaid by the Epicures; ὑπὲρ πάντα τὰ γλύκισματα τὸ μικρὸν μέρος τῆς δεκάτης ἡδὺ τοῖς ἀπολαύουσι τῆς τρυφῆς, i.e. who doting upon voluptuous ſweete delicates, called the tenth part of honey *Ambroſia*; (and perhaps that ſect ſet up the trade of Bee-mongers in Athens, (as *Syneſius*) τῶν Ἀθήνησι μελιττουργῶν.) So I am afraid, the tickling ſweetneſſe of tythes, is the cauſe, why the ſmart and ſowrneſſe of ſacriledge is not felt, nor eſſaced. And therefore in my opinion, *Thomas Aquinas* doth well, to make ſacriledge, *ſpeciem luxuriæ*; ſo that it may be a ſinne, and yet they never be convinced of it, for deſire of profit will lull the conſcience a ſleepe and waken & ſharpen the wit to prove any thing that we are reſolved to approve either out of faction or affection. But thinke they what they will I am ſure, not only the anciēt Fathers of the moſt pure primitive Church, but even the godly Emperours did eſteem it a ſin, & that in ſo higha degree, that when they granted generall pardons at Eaſter, and other ſolemn times, they excepted ſacrilegious perſons: As *Theodoſius* the great, *ob diem Paſchæ, quem intimo corde celebramus, quos reatus aſtringit, carcer incluſit, ſolvimus; attamen ſacrilegus maximè à communione iſtius muneris ſeparetur.* So alſo *Gratian* and *Valentinian*; *Religio anniverſaria obſervationis hortatur, ut omnes periculo carceris, & à metu pœnarum eximi jubeamus: verùm eos excipimus, quos ſcelera graviora compulerunt, ut qui ſunt ſacrilegi & ſepulchri violatores.* So in many of the Novels τὰ πρῶτα τῶν μεγαλίων, upon Eaſter day ſet all perſons free οἱ μὴ τὰς ἱερὰς αὐλὰς ἔβλαψαν, but if any be guiltie of ſacriledge, let him be kept ſtill in hold. So that you ſee, it was reckoned *inter extraordinaria crimina* in thoſe dayes; yea it is ſo accounted by the common Law of this land; for by it a ſacrilegious perſon ſhall not enjoy the priviledge of his Clergie: and ſo it would be thought with us, if profit did not blind the judgement in the payer

Zozzi hiſt. Chal. 7.

Syneſius epiſt. 136.

Thom. 2a. 2æ. q. 155. a. 10.

Theod. tit. de indulg. Crim.

Theod. eod. tit. L. primo. c. d. Epiſc. audient; Harmenopulus Promp. Iur. Civ. l. 6. tit. 5. Briſſonius ad l. Dominico & l. Omnes dies c. de feriis.

payer of tythes, and indiscreet covetousnesse lead many Clergy-men to make no distinction betwixt free and friendly compositions with a bountifull Patron and sacriledge. In my poore judgement, the Canon Law is but just in decreeing, that *Si patronus Laicus ad inopiam fuerit redactus*, hee must have some competent sustenance from the incumbent, especially if hee have not beene sacrilegious, and so by Gods judgement brought to it. And I do conceive, that this may be, notwithstanding they doe not charge any parsonage with annuitie rents, which is prohibited by the Statute of *Elizabeth*. Thus it is plaine, that the revenues and maintenance of the Clergie are possessed by the Kings Lawes, and may be demanded as due by them.

C. quicunq; 16. q. 7. c. nobis. extr. d. jure patronat.

3. Eliz. 2.

§. 5. The other part of the honour of the Clergie, annexed to the power of order, is in priviledges, and immunities; by which this power is exercised with more ease, delight, and respect; and as it were, with the whole man without distraction. Now all the priviledges the Church doth enjoy or desire, arise, and are raised by the Kings lawes and royall prerogative. As that ancient-often-confirmed *Magna Charta* doth fully confirme all the former priviledges of the Clergie. And decreed, that the *perturbatores*, the disturbers of them should be excommunicated *ipso facto*; upon which words Archbishop *Boniface* grounds a provinciall constitution to the same purpose. And that was then favour enough, for then they had priviledges to a surfeting surplussage, but now the Clergie stands in more need of them, and they humbly expect them onely from the favour of their Princes, who hath a plenitude of power to grant more and larger priviledges, than ever they will desire. For all the priviledges are granted in relation to some Law, and the power of an absolute Prince is above all Lawes (as *Dion Chrysostome* told just *Trajane*) Βασιλεὺς τῶν νόμων μείζων: or

Magna Charta. cap. 1.

Linwood prov. sanctio de pœnis verb. Charta.

Dion Chrysost. περὶ Βασιλείας γ. κ. τ.

as

as the same Counsellour to the same Emperour, τῶν νόμων Βασιλεὺς ἐπάνω which *Cujacius* explaines and limits to coactive corrective Lawes, which *Dion* saith, began in *Augustus* dayes, οὐδένι τῶν πάλαι Ῥωμαίων νόμων ἐδέθη λελύσθαι: none of the ancient *Romans* were freed from lawes, τουτέστιν ἐλεύθερον ἀπὸ πάσης ἀναγκαίας νομισεώς εἰσι, that is from the necessity of obeying. *Nemo cogitur à seipso, sed Lex non habet vim coactivam, nisi ex Principis potestate.* And I doe beleeve, that the Scriptures (seeing that they say more for the right of Kings, than any booke in the world) doe, if not fully set downe this power, yet permit it with approbation in some cases, especially for the publique good of the Church, which, I am sure, is a farre more conscionable and commendable course, than to accommodate religion to serve the turne of the State (as that judicious *Ammiratus* upon *Tacitus*) *Bisogna accõmodar la ragione di stato alla religione, & non la religione alla ragione di stato.* So that absolute Princes, such as God made the Kings of *Israel*, having an extraordinary power in relation to an extraordinary occasion, are not to give a particular reason of any lawes they shall make, or any priviledges they shall grant upon any such occurrences, neither will any wise mã expect they should; especially if they seeme in thẽ to aime at the generall good of Church & Common-wealth. At other times upon ordinary affaires, Princes may bee gratiously pleased to condescend to give content, in giving reasons; and to be led by the punctuall advise of learned Lawyers, when there is no danger in deliberation with them, delaying, nor in divulging. (As I remember *Julius Capitolinus* saith of *Antoninus Pius*) *Omnium quæ gessit per Edicta, & in Senatu rationem reddidit, & juris consultis adhibuit*; and not with great securitie and reason: seeing he was the adopted sonne of a Senatour, and his Empire was at the highest and deepest pitch both of peace and plenty. And this power must necessarily bee granted to

Cujacius observ. lib. 15. c. 30.
Dion hist. l. 53
Durandus de legibus. conclus. 1. §. 19.
Clapmarius de jure Dominationis lib. 4.
Gyphanius I C. de vita Iustiniani Comment.

bee most naturall to our Prince, if wee doe but consider what the most honourable Privie Counsell (that supreame representation of the State in ordinary) may doe in this case: whose wisedomes have the power, not onely in an *Interregnum* to send out proclamations, but also in the life time of the King, in extraordinary omitted cases, to order publique affaires by State ordinance, under their owne Teste and Seales.

Now our King being a most absolute Monarch, having this prerogative, from that we have and hold our priviledges, not from that written prerogative, abstracted out of *Fitzherberts* Abridgement, by Sir *William Stanford*, whereby the Kings Exchequer hath many priviledges, and peculiar processes (as the Civilians call them *privilegia fisci, fiscus* προτοπραξίαν *habet.*) But from an unwritten unrestrained right of Dominion, whereby he hath plenarie power, not onely to make legall propositions of validitie, or voyde in their first institution, or to interpret them, either by declaring them to bee corrected in some points and cases, especially if hee correct them by a more particular expresse pressing Law; as he may correct the Law of Nature by the Law of Nations; the Law of Nations by the Law of armes; the Law of armes, by the Law of particular leagues; and all by the power of dominion: or restraine them in respect of some persons, or publique societies; but he may dispence also with them; since some penall Statutes are made with relation to his power of pardon after the Act; therefore it is not so much to except some from being obnoxious to the punishment, by pre-interpreting that it was not intended to extend to such persons; for so the priviledge is not against Law, but besides it, or above it: as the most judicious Civilians have alwayes accounted *exceptiones Regias & restrictiones, & jura exorbitantia, dispensationes, & limitatoria dispositiones*, to be concluded *intra justa jura Dominationis.*

Girard. du Haillan des priviledges des Roys de France liv. 3. Cujacius observ. l. 2. c. 24. Cujacius in corpus Vlpiani ad tit. de Legibus. verb. qua prohibent.

Ejus est interpretari legem, cujus est constituere, L. 1. C. d. LL. Vt latè probat Durand. Episc. Meldensis de legib. Conclus. 3.

nis. Yea there are Statutes dispensatorie; as that of the pluralitie, and not residencie, which the Archbishop of *Canterbury* limits by his approbation, in granting faculties of favour. And priviledges must necessarily be where there are multitudes of Statutes, which bee so strict in point of Injunction, as if the makers of them had not considered, that politique Lawes must bee made with respect to morall possibilitie, as what men may doe; and yet the punishment of their transgression is not expressed; but left to the pleasure or displeasure of the King. But these are not the onely priviledges that the Kings royall prerogative doth grant, as immunities and impunities, for then the lawes should be onely punitive, if there were onely use of protections and pardons: but as lawes are also remunerative, so Princes have power to reward after a priviledging manner; and chiefly in our Kingdome, where it seemes to be on purpose omitted by the written lawes, and left to the Kings pleasure and power, especially concerning Ecclesiasticall persons, who have most neede of them, and may now as freely enjoy them as any other persons. For though heretofore it was prejudiciall to our Kings to grant priviledges to all Ecclesiasticall persons, when they were so encreased in multitudes, and overgrowne in magnitude for the whole Kingdome, and the Popes would confirme them as irrevocables: yet now seeing they are but few in number, and small in power, & the King may call them in when he pleases, there is no true cause of danger. This want of these priviledges hath beene the cause of much evill in the Church, and the more they are impeached by those that professe themselves the maintainers of the Kings peace, lawes, and royall prerogative, the more will the State Ecclesiasticall runne to ruine: And they are much infringed in our Universities. Not so much by Acts of Parliament (if they were not misconstrued by abridgments), as by particular facts of those

Eccl. Anglicana Canon. 41.
Lex debet esse manifeste possibilis secundùm naturam & secundùm consuetudinem patriæ loco temporéque ut Durand. de legib. con. 1. §. 3.

that have power in their hands. For though I find an Act of Parliament, 9° *Henrici quarti*, that confirmes all priviledges, except some lately granted to the Universitie of *Oxford*, which seemes to have relation to the Statute of Provisors; yet I beleeve some moderne Abridgers inferre more under the word *Excepted* than was intended: for I have no reason to thinke that *Henry* the 2^d did peremptorily repeale any part of the Universities priviledges, though hee might for some present particular reasons of State, not passe them with so full indulgence in all points. And I find a more ancient (and therefore as authentique) Abridger to be of my opinion; for he saith, that the King did moderate them: but suppose the Statutes passed about the time of *Edward* 3^d, *Richard* 2^d, and *Henry* the 4th, had beene more prejudiciall to Ecclesiasticall priviledges then they are: Yet it may bee doubted whether those Acts were absolutely authentique, because the Lords spirituall consented not to many of them. As the same Abridger. This I am forced to complaine of, with feare, least that fall out which happened to the Universitie of *Prague*; which was utterly ruined by *Charles* the fift, taking the priviledges away at *Dan. Leva* his desire. Whereas *Francis* the first of *France*, fearing and favouring the Universitie of *Paris*, restored all the priviledges which *Lewis* the eleventh had taken away upon a just ground of sedition, which hath made it to revive and flourish ever since. But there are some politiques that hold it a needlesse thing, to be any way indulgent to silly Schollers, as *Cujacius* saith out of *Galen*, that they expressed weake men under the title of *Scholastici*: they make meere *Aquilæ*, *John-a-nokes* of them, but the fault is in themselves according to the *French* Proverbe, *Qui se fait brebis il le loup le mange*: i. e. *He that makes himselfe a Lambe, shall bee eaten by the Wolfe.* For though the Clergie be weake of it selfe, and tempt the contemners

Abridgement. 1552.

Dinothus Adversus hist. cent. 7.

Cujacius in sent. Paul. l. 1. tit. 12.

Brissonius de antiquitat. Jur. Civilis.

De origine immunitatis Medicorum.

of

of it to over-top and over-turne it: Yet since we have a pious prudent Prince, that is royally ready upon the first appeale, to protect and relieve his poore Clergie: wee are not to be pittied, if we neglect to implore his supreme assistance, for we are not in a condemned estate as common objects of abuse, nor under an unpittied oppression, which should beate us backe from the discovering our wrongs, as a State whose ruines are trampled upon, being overthrowne by a Princes disgrace, but wee fully enjoy our Soveraignes favour, which is the best foundation of a subjects fortune. And thus it is something evident how the honour of the Clergie annexed to the power of Order, is granted and sustained by the Kings lawes and royall prerogative. I must now in briefe shew the like of the honour annexed to the power of jurisdiction.

§. 8. The power of jurisdiction which I do here intend, is not that delegated power which is in Bishops, Vicars, or Officialls, nor that power Archdeacons and Deanes exercise either by custome or priviledge; but that ordinary power which is in Bishops. To this power of jurisdiction there is honour annexed by the lawes of this land, and the Kings royall prerogative: which I divide as before, into revenues ordinarie, and priviledges; the revenues are their temporalls, and part of the perquisits, called the *Census Cathedraticus*: the first of which are given and granted by the Kings royall bountie, & confirmed by the lawes; the other are set downe and approved by the same lawes. Bishops temporalls are annexed to their Sees by the Kings gift, and are as it were their Gleab, but are indeed their Baronies which they held of the King *in capite*, and performe services for them; and therefore they are as it were wards to the King during the vacancie: *quo ratione Baronio* (as *Linwood*) *ad Episcopum spectare possunt, Dominus rem custodiam habet*; (as *Duarenus* saith of the Kings of *France*) *Princeps quam diu vacat Episcopalis sedes, feudorum*

Stanford prærogat c. 1.

Linwood de immunitatib. c. continet.

Duarenus de benef. l. 3. c. 11.

feudorum lege, prædiorum omnium administrationem suscipit. But these temporalls are not to be restored in this Kingdome till consecration, and so seeme to be annexed to the power of Order in Bishops: for their consecration according to the Scholasticall Canonists is *perfectio characteris*, which they at first received when they tooke the Order of Priesthood, and so seeme not properly annexed to the power of jurisdiction, for before consecration upon election and confirmation they may exercise the power of jurisdiction, though not of Order. *Episcopus Electus & confirmatus potest exercere quæ sunt jurisdictionis, non quæ sunt ordinis Episcopalis ante consecrationem; suspendere potest à beneficio, non ab officio; quia ab officio suspendere, est à potestate ordinis ordinaria.* But Justice *Glanvil* seemes to intimate that they were restored, when they were but Lords elect, because *electi ante consecrationem homagia sua facere solent*: but whether it were *de jure* or *de gratia* (as the learned in the Common Law distinguish) I leave to them to determine; and thinke it great happinesse for the Bishops, and the great honour of our moderne Kings, that they are so fully restored at all, since they have as much power, and may pretend as much reason to seise the temporalls into their hands as well as others. ---- But our Royall Soveraignes pious Father, set a good example to his Majestie to follow; for in the first yeare of his raigne hee enacted a Statute to prevent all diminution of Episcopall revenues, though it were to alienate them to the use of his Crowne: yea though it were but in exchange for impropriations, (a course which was too common in Queene *Elizabeths* daies) insteed whereof our Kings have out of royall indulgence given some licence for *Mortmaines*. If this redresse had come before they had beene too much impaired, Bishops would not have desired so many Commendams, nor Rectors of Parishes made use of the Statute of pluralitie. To their revenues in those temporalls there,

Augustinus de Ancona de potest. PP. quæst. 22. Art 9.
Consecratio Episcopi est complementum Ordinis Sacerdotalis; cum Abbatis consecratio est institutio non sacramentum Ecclesiæ. ut de Palud. de causa immediat. pot. Ecclesiast. art. 5. Panorm. in c. cùm in cunctis. §. cùm verò extr. d. elect. n. 2. Linwood lib. 1. de constit. 12. Glanvil. lib. 9. cap. 1. Stamford prerogative c. 14. Linwood c. contingit. de immunit. Eccles. ver. & nisi Dominus Rex. 1. Iacobi. c. 3.

there are many honourable priviledges annexed, as they are Barones; So that Bishops have the priviledges of Barons in the Parliament; and that upon good ground, since they hold of the King, and performe the services belonging to them, their honour being as well personall as feudall, *non ratione nobilitatis sed ratione officii.* As the judiciously learned *Selden* (as *Matthew Paris*) *Episcopi de regè tenent in capite Baroniæ, & faciunt omnes consuetudines regis, & sicut cæteri Barones debent interesse judiciis regis cum Baronibus.* Now the Bishops (especially since the reformation) are ready and willing not onely to take the oath of homage, which some denyed heretofore, as *Thom. Becket*, and *Glanvill* who was the chiefe Justice, seemes to countenance it, by saying, *Episcopi consecrati non solent Domino regi homagium facere de Baroniis suis, sed fidelitatem.* The present Clergie (I say) is not only ready to take the oath in the old favourable free forme [*salvo ordine,*] but as it is now more strictly obligatorie by putting in these words [*in verbo veritatis;*] and leaving out the former. Which oath may be taken without any suspicion of Symonie, (*Panormitan*) *Homagium, vel fidelitas ab Episcopo præstari possit extra periculum Symoniæ:* and *Cajetane* the learned schooleman doth in this agree with this ancient able Cannonist: *Episcopus legitimè jurare potest Homagium quoddam vel fidelitatem, quia nil in isto juramento continetur, circa curam Animarum:* for that is taken in relation to their temporalls which they have frō the Kings favours: not in relation to their consecration, which they have frō the qualifying grace of God, which was well expressed anciently in their stile [*Dei gratiâ Episcopus*] and now by [*providentiâ divinâ,*] so that seeing they perform the same services, they may enjoy the same priviledges with the Barons. Now as all priviledges, so these that they enjoy common with them, are besides and above the Common course of law. For instance, as they are Assessours in Parliament,

Titles of honour *part. 2. c. 7*

Mathew Paris Hen. 2. p. 120.

Glanvil. lib. 9. cap. 1.

Panor. inc. ex diligent. extr. Simon. n. 4.

Cajetan in secund. secund. q. 184. art. 5.

ment they may appeare by Proxie: as they are witnesses, they may sweare onely *Vestis Evangelii, verbo sacerdotis*: as Barons, by their honour; and when they are at any time delinquents, they should be tried by their Peers, (if they were tryed as Bishops, and not first degraded:) and so some have beene tryed, untill one appealed from them to the Pope. And good reason in those dayes they had, (if not now) to be so tryed, because many of the Bishops of those times were of the Princes of the nobilitie, (as may be seene in Bishop *Godwins* Catalogue of Bishops:) so that when Peeres were Bishops, why should not Bishops be Peeres. It seemes in *Richard* the seconds daies they were so accounted, for when hee did make up the number of the twelve Peeres of the land, hee chose *Brentingham* Bishop of *Exeter* one of them, which (I conceive) hee would not have done if hee had not beene a Peere before: and I am the rather perswaded so to thinke, because *Richard* the second extends the Statute of *Scandalum magnatum*, to Bishops as well as Dukes, Earles and Barons under the title of Peeres of the Land. Whence by the way; if wee were driven into an exegent for devices, I might inferre that this Prince who enacted the Statute of *Premunire* would never have so highly interested a Bishop in Civill affaires if he had accounted it a *premunire* to inter-meddle with them; or at least he did moderate it by priviledging some above it, in relation to some domestique businesse. Besides these priviledges which they have as they are Barons. The Kings of this land have beene pleased out of their Princely favours to bestow many freedomes upon them, especially on the Archbishop of *Canterbury*, as amongst other ordinary and knowne, one against his Majesties written prerogative, as that the land held of that Bishop shall not be Ward to the King: Yea they were so much reverenced by the Statute-makers in *Edward* the sixt, that the Archbishop had,

2. *Rich.* 2. c. 5.

9. *Hen.* 6. *ult.*

Stamford. prarogat. c. 1.

had the priviledge to speed a processe in his owne name, and to signe it with his owne seale. And I beleeve the high estimation of that See abroad might moove them to it, for they are not onely stiled Primates of all *England*, and Metropolitans, but Patriarches; *Patriarchæ minorum gentium sunt Cantuariensis, Aquiliensis, Bituregiensis, & Gradensis*, and the most lawfull Legats of the Apostolicall See; *Legati nati dignitas Episcopatui Cantuariensi, Remensi, Eboracensi, & Pisano annexa est*. This forraine respect might moove them more particularly to honour them, though they have alwayes most highly favoured Bishops in generall, insomuch, that they have made them not onely *à sacris*, but *à secretis*, which is safe for a King, and no distraction to a Bishop in his calling; with *Lipsius* limitation *interesse eos posse imò debere, sed rarenter cùm de rebus planè seriis agitur, & quæ tangunt universum statum*; then should not Princes need to forbid Bishops the Court without they were sent for, (as *Baronius* saith, *Justinian* was faine to do.) Wise King *Solomon* made such choice for the Princes of highest imployment and most intimate secrecie, were of the Priest and Prophets and their children, (which I conceive was one reason that made *Ieroboam* runne another course when he plotted to ruine his Monarchie) as then, so now assuredly this would prove a course for the securitie both of Church and Commonwealth; (as an old learned Lawyer of this Iland wrote in the latter and better time of the raigne of *Henry* the 3d.) *Reges tales sibi associant ad consulendum & regendum populum Dei, ordinantes eos in magno honore & potestate*.

Duarenus de gradibus Episc. cap. 9.

Lælius Zecch. de statu Legat.

Lipsius Annot. in 3. Polit.

Fredericus Farius de qualitatibus consularij.

Baron. Annal. Anno 928.

1 Kings cap. 4. vers. 1.2.3.4.

Bracton. de rerum divisione l. 1. c. 8. §. 2.

Thus I have briefly discoursed, though not fully discovered something of the relation betwixt the State Ecclesiasticall and the Civill; which I have done without advising in any thing to an alteration, or devising any thing for innovation; and with submission to the licence of authority, and the judgement of wise learned Readers,

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who are able descreetly to distinguish betwixt a respective tendring of my selfe readily to retract any errour upon their judicious signification, and a weake neglected undervaluing of my best thoughts; as if I understood my selfe no better, then out of a fond facultie, fillily to compile to satisfie any impertinent pedanticall, captious exceptions; whenas I professe I am not able to worke my selfe to any other resolution, then to say no, or nothing to them; taking the liberty to goe on in my way, and giving them leave to take their course, and so wee shall not clash nor jutt: *Nam non arietant nisi in eadem via ambulantes.* And so I content my selfe with the same, or the like lot that was cast upon *Tully*, by the Readers of his so rationall books *de Repub.* (which I would we had to read) *viz. Ciceronis libros de Repub. reprehendit hinc Philologus aliquis, hinc Grammaticus, hinc Philosophiæ deditus*; and I am incouraged to neglect such censures, because as serious *Seneca* slights their peevish curiositie, so I know many most solidly judicious, to whose wisedomes I may appeale from any.

Seneca ep. 103.

Seneca ep. 108.

FINIS.

ERRATA.

EPist. Dedicatory *Esudon* reade *Esudon*. p. 6. marg. [illegible], r. [illegible]. p. 15. l. 24. adde and. p. 16. l. 32. [illegible] r. [illegible]. p. 18. marg. adde *Livius lib.* 6. p. 19. l. 23. *subitos* r. *subito*. p. 33. l. 33. make r. made. p. 36. l. 31. Lengists r. Legists. p. 81. l. 35. State r. Statute. p. 83. l. 3. from r. frame. p. 82. l. 12. Popes r. Kings. p. 84. l. 34. conclusion r. consultation.

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